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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SPECIAL THIRD DIVISION

[A.M. No. P-09-2686. March 28, 2011]
(Formerly OCA I.P.I. No. 06-2441-P)

PRISCILLA L. HERNANDO, *complainant, vs.* **JULIANA Y. BENGSON, Legal Researcher, RTC, Branch 104, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; AN ADMINISTRATIVE OFFENSE CONSTITUTES "MISCONDUCT" WHEN IT HAS A DIRECT RELATION TO, AND IS CONNECTED WITH, THE PERFORMANCE OF THE OFFICIAL DUTIES OF THE ONE CHARGED.— In x x x [the] case [of *Largo v. CA*], it was explained that an administrative offense constitutes "misconduct" when it has a direct relation to, and is connected with, the performance of the official duties of the one charged. x x x Thus, misconduct refers to a transgression of an established and definite rule of action, more specifically, some unlawful behavior or gross negligence by the public officer charged.

2. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; COMMITTED IN CASE AT BAR; PENALTY.— [T]he Court agrees with the position taken by Hernando - that Bengson should be liable under Rule IV, Section 52 (A) 20 for conduct prejudicial to the best interest

of the service in view of her act of offering her services for facilitation of the land transfer papers at the BIR and representing that her half-sister and niece had the power, influence and capacity to facilitate the titling of subject property. Following the standard set forth in R.A. No. 6713, Bengson should not have offered the so called package contract and asked for a considerable amount from Hernando knowing that her half-sister and niece were neither geodetic engineers nor employees of the BIR knowledgeable in the preparation of the necessary papers and documents for the titling of the subject property. Certainly, this misrepresentation on the part of Bengson begrimed both the image and integrity of her office. x x x With Bengson's complicity in the scam or fraud against Hernando, she is undeniably guilty of conduct prejudicial to the best interest of the service which is punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense pursuant to Section 52 A(20) of the Uniform Rules of the Civil Service Commission (CSC).

3. ID.; ID.; ID.; COURT PERSONNEL; MUST TOTALLY AVOID ANY IMPRESSION OF IMPROPRIETY, MISDEED OR MISDEMEANOR NOT ONLY IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES BUT ALSO IN CONDUCTING THEMSELVES OUTSIDE OR BEYOND THE DUTIES AND FUNCTIONS OF THEIR OFFICE.— [T]he Court would like to once again underscore that the conduct of every court personnel must be beyond reproach and free from suspicion that may cause to sully the image of the judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Every court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.

4. REMEDIAL LAW; COURTS; CANNOT SIMPLY SHY AWAY FROM SETTING RIGHT THOSE THAT ARE EVIDENTLY IMPROPER ACTS OR CONDUCTS AMONG THEIR PERSONNEL, AND INSTEAD, ORDER THEM TO DO WHAT IS BUT PROPER AND JUST; CASE AT BAR.— As regards Hernando's prayer that Bengson be ordered to return the money in the amount of ₱76,000.00, the Court resolves to reconsider its earlier disposition. While Courts should refrain from becoming a collection agent, it cannot simply shy away from setting right those that are evidently or obviously improper acts or conducts among its personnel, and instead, order them to do what is but proper and just. In this case, what is right and just under the circumstances is to order the respondent to pay her obligation to the private complainant. x x x Considering that Bengson, in her comment on Hernando's motion for reconsideration offered to restitute the said amount without admitting guilt but only to buy peace; that her complicity in the so called package contract remains; that he did admit having received the amount of ₱70,000.00 during her testimony before the investigating judge, the Court now resolves and orders the restitution of the said amount of ₱76,000.00 plus legal interest starting from the year 2003.

R E S O L U T I O N

MENDOZA, *J.*:

Before us is a motion for reconsideration filed by private complainant Priscilla L. Hernando *(Hernando)* seeking a review of our March 10, 2010 Resolution finding respondent Juliana Y. Bengson *(Bengson)* guilty of Simple Misconduct and ordering her suspension from the service, without pay for one (1) month and one (1) day. The *fallo* of the March 10, 2010 Resolution is reproduced below as follows:

WHEREFORE, finding Juliana Y. Bengson, Legal Researcher, Regional Trial Court, Branch 104, Quezon City, GUILTY of Simple Misconduct, the Court hereby orders her SUSPENDED from the service, without pay for one (1) month and one (1) day, with a

WARNING that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.[1]

In her motion, Hernando repleads the assertions in her memorandum and prays that a more severe penalty should be imposed on Bengson. According to her, respondent being a court employee she had no business offering her services for facilitation of the land transfer papers at the Bureau of Internal Revenue *(BIR)*. Such actuation is "conduct prejudicial to the best interest of the service," and thus should be punished for such act pursuant to the ruling in *Largo v. CA*.[2] In addition, she prays that the amount of ₱76,000.00 that was given to respondent should be considered as a "just debt" and, therefore, she should be made to answer for the same from her salary.[3]

In her Comment, Bengson counters that she merely accommodated the request for help from Hernando's own daughter. She insists that she had no interest whatsoever in the facilitation of the said land transfer papers.[4]

The Court stands pat in its earlier holding that:

> In the present case, the OCA (Office of the Court Administrator) found, and we agree, that Bengson's complicity in the failed titling of the property eyed by Hernando was manifest.
>
> Based on the trial judge's investigation and that of the OCA, Bengson offered to help Hernando find a surveyor for a fee, and she was the very same one who directly received the money intended for the titling of the property. To Hernando's dismay, Villacorte did not turn out to be the 'expert' that she was made to believe. To our mind, it was the very misrepresentation that precipitated the transaction that eventually defrauded Hernando. Complainant would not have parted with her hard-earned money were it not for Bengson's

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[1] SC Resolution in A.M. No. P-09-2686 dated March 10, 2010, p. 5; *Rollo*, p. 538.

[2] *Largo v. CA*, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 733

[3] Motion for Reconsideration, p. 1-3; *Rollo*, p. 541.

[4] Comment on MR, p. 1; *Rollo*, p. 543.

misrepresentation with respect to Villacorte's capacity to facilitate the titling of the property. Respondent cannot extricate herself by claiming that she had no direct participation in the negotiations.[5]

This is buttressed by the report of the investigating judge, Executive Judge Teodoro A. Bay *(Judge Bay)*. Although Judge Bay did opine in his report that the above transaction was purely private in character and that there was no showing that respondent took advantage of her position as legal researcher of the court, he did conclude:

> x x x. The respondent, therefore, insofar as the complainant was concerned, was the person responsible for the package contract for which reason all communication from the Hernandos were directed to her. Moreover, respondent acknowledged to have received after repeated calls/demands from the complainant.[6]

The above finding is likewise affirmed by the OCA. Through then Court Administrator and now Associate Justice of the Supreme Court, Justice Jose P. Perez, it made the following observation:

> In the instant case, the participation of respondent Bengson, in the failed titling of the property being eyed by the family of the complainant, cannot be denied. From the facts ascertained by the investigating judge, it was respondent who offered to help the complainant find a surveyor, in exchange for a fee. It was also established in the investigation that respondent directly received money from the complainant. To aggravate the situation, the surveyor, Maritess Villacorte, whom respondent recommended, did not turn out to be the 'expert' complainant had expected.
>
> Complainant would not have parted with her hard-earned money, if not for the assurances she received from the respondent. The 'seed' of the fraudulent transaction would not have been 'planted' if respondent did not offer her 'services' in the first place.[7]

---

[5] SC Resolution in A.M. No. P-09-2686 dated March 10, 2010, pp. 2-3; *Rollo*, pp. 535-536.

[6] *Id.* at 254.

[7] *Rollo*, pp. 518-519.

The complicity of Bengson was very apparent. During the hearing before Judge Bay, she admitted that it was she together with her husband who went to see Hernando at the latter's residence sometime in September 2002 in order to "explain" the package for facilitation of the land transfer papers of the subject property at the BIR.[8] Certainly, no disinterested or uninvolved person would go so far as to pay a visit to someone whom she had not met before just to relay the package contract allegedly offered by her half-sister and niece, unless she herself was very much involved in it or, at the least, would benefit from the arrangement.

Bengson also admitted that when she went to Hernando's residence for the second time, she was accompanied by her half-sister and niece purportedly to explain and reduce the package contract cost from ₱100,000.00 to 70,000.00. In the meeting, payment was agreed to be paid through her (Bengson).[9] Later in her testimony, Bengson admitted having received the amount of ₱70,000.00 from Hernando in the presence of her half-sister and niece.[10]

While Bengson claimed that she immediately turned over the full amount to her half-sister and her niece at the time that they were still at Hernando's residence, the receipt covering the amount was only issued when she allegedly chanced upon them at McDonald's in April of the following year. The Court is of the considered view that it is nothing but a desperate attempt on the part of Bengson to distance herself from the deal made with Hernando.

Thus, the Court is not ready to depart from its original finding with respect to the complicity of Bengson in the wrongdoing against Hernando. What remains to be resolved now in this motion for reconsideration is whether Bengson should be held liable for Simple Misconduct or for "Conduct prejudicial to the best interest of the service?"

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[8] *Id.* at 424-428.

[9] *Id.* at 427-431.

[10] *Id.* at 448.

In resolving this issue, a review of the Court's disposition in the case of *Largo v. CA*[11] is instructive. In that case, it was explained that an administrative offense constitutes "misconduct" when it has a direct relation to, and is connected with, the performance of the official duties of the one charged.

> x x x. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer, x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office, x x x.[12]

Thus, misconduct refers to a transgression of an established and definite rule of action, more specifically, some unlawful behavior or gross negligence by the public officer charged.[13]

It must be noted however that in this case, no proof was offered to show that Largo's actions being complained of were related to, or performed by him in taking advantage of, his position. His actions did not have any direct relation to or connection with the performance of his official duties. Hence, it was concluded that Largo acted in his private capacity, and thus, could not be made liable for misconduct.[14] But, considering that Largo's questioned conduct tarnished the image and integrity of his public office, he was still held liable for conduct prejudicial to the best interest of the service. The basis for his liability was found in Republic Act No. 6713 (R.A. 6713) or the Code of Conduct and Ethical Standards for Public Officials and Employees. The Code, particularly Section 4 (c) thereof,

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[11] G.R. No. 177244, November 20, 2007, 537 SCRA 721.

[12] *Id.* at 730-731.

[13] *Id.* at 721 and 731.

[14] *Id.* at 732.

commands that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest. Largo's actuations fell short of this standard.[15]

Similarly, applying the same standard to the present case, the Court agrees with the position taken by Hernando - that Bengson should be liable under Rule IV, Section 52 (A) 20 for conduct prejudicial to the best interest of the service in view of her act of offering her services for facilitation of the land transfer papers at the BIR and representing that her half-sister and niece had the power, influence and capacity to facilitate the titling of subject property.

Following the standard set forth in R.A. No. 6713, Bengson should not have offered the so called package contract and asked for a considerable amount from Hernando knowing that her half-sister and niece were neither geodetic engineers nor employees of the BIR knowledgeable in the preparation of the necessary papers and documents for the titling of the subject property. Certainly, this misrepresentation on the part of Bengson begrimed both the image and integrity of her office.

At this point, the Court would like to once again underscore that the conduct of every court personnel must be beyond reproach and free from suspicion that may cause to sully the image of the judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Every court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy

[15] *Id.* at 733.

burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.[16]

With Bengson's complicity in the scam or fraud against Hernando, she is undeniably guilty of conduct prejudicial to the best interest of the service which is punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense pursuant to Section 52 A (20) of the Uniform Rules of the Civil Service Commission (CSC).

As regards Hernando's prayer that Bengson be ordered to return the money in the amount of ₱76,000.00, the Court resolves to reconsider its earlier disposition. While Courts should refrain from becoming a collection agent, it cannot simply shy away from setting right those that are evidently or obviously improper acts or conducts among its personnel, and instead, order them to do what is but proper and just.[17] In this case, what is right and just under the circumstances is to order the respondent to pay her obligation to the private complainant. In the case of *Villaseñor v. de Leon*,[18] it was written:

> Truly, this Court is not a collection agency for faltering debtors. Hence, in a disciplinary proceeding, we cannot adjudicate on the existence and amount of the loan if such facts are disputed by the parties.[10] At the same time, it is not proper in these proceedings to issue writs of execution or order the levy of respondent's properties, including her salaries to satisfy the indebtedness. For, the purpose of an administrative proceeding is to protect public service and maintain its dignity based on the time-honored principle that a public office is a public trust. Evidently, disciplinary cases involve no private interest and afford no redress for private grievance, as they are undertaken and prosecuted solely for the public welfare. The complainant or the person who calls the attention of the court to the alleged misconduct is in no sense a party, and has generally no

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[16] *Jugueta v. Estacio*, A.M. No. CA-04-17-P, November 25, 2004, 444 SCRA 10, 18.

[17] *Villaseñor v. De Leon,* A.M. No. P-03-1685, March 20, 2003, 399 SCRA 342, 349.

[18] *Id.*

interest in the outcome except as all good citizens may have in the proper management of justice.

Consistent with the realm of an administrative case, we are dutybound to correct whatever we perceive as an improper conduct among court employees by ordering them to do what is proper in the premises. In the instant case, therefore, we direct respondent to pay her indebtedness to complainant, *i.e.*, inclusive of principal and interest agreed upon, in accordance with their agreement, if any, or within a reasonable time from receipt of this Decision. A violation of this order could become the basis of another administrative charge for a second offense of "*willful failure to pay just debts*" punishable by suspension of one (1) to thirty (30) days, among other serious charges arising from a willful violation of a lawful order of this Court. With this command, we hope that respondent will stay away from such misdeed and shun a subsequent offense of the same nature, or any other offense for that matter.

The payment of respondent's debt is in addition to the penalty of reprimand with warning that commission of the same or similar act in the future will be dealt with more severely. This ruling should suffice to accomplish the purpose of disciplining an erring court employee to whom a passage in the Book of Proverbs must have a reverberating significance, "*A single reprimand does more for a man of intelligence than a hundred lashes for a fool*."

Considering that Bengson, in her comment on Hernando's motion for reconsideration offered to restitute the said amount without admitting guilt but only to buy peace; that her complicity in the so called package contract remains; that he did admit having received the amount of ₱70,000.00 during her testimony before the investigating judge, the Court now resolves and orders the restitution of the said amount of ₱76,000.00 plus legal interest starting from the year 2003.

WHEREFORE, the motion for reconsideration is *GRANTED*. The March 10, 2010 Resolution is *MODIFIED*. Juliana Y. Bengson, legal Researcher, Regional Trial Court, Branch 104, Quezon City, is found *GUILTY* of Conduct Prejudicial to the Best Interest of the Service and is hereby ordered *SUSPENDED* for six (6) months and one (1) day from the service without pay.

She is further ordered to restitute the amount of ₱76,000.00 plus legal interest to Priscilla Hernando, starting from the year 2003.

SO ORDERED.

Corona, C.J., Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 164321. March 28, 2011]

SKECHERS, U.S.A., INC., *petitioner, vs.* **INTER PACIFIC INDUSTRIAL TRADING CORP., and/or INTER PACIFIC TRADING CORP. and/or STRONG SPORTS GEAR CO., LTD., and/or STRONGSHOES WAREHOUSE and/or STRONG FASHION SHOES TRADING and/or TAN TUAN HONG and/or VIOLETA T. MAGAYAGA and/or JEFFREY R. MORALES and/or any of its other proprietor/s, directors, officers, employees and/or occupants of its premises located at S-7, Ed & Joe's Commercial Arcade, No. 153 Quirino Avenue, Parañaque City,** *respondents.* **TRENDWORKS INTERNATIONAL CORPORATION,** *petitioner-intervenor, vs.* **INTER PACIFIC INDUSTRIAL TRADING CORP. and/or INTER PACIFIC TRADING CORP. and/or STRONG SPORTS GEAR CO., LTD., and/or STRONGSHOES WAREHOUSE and/or STRONG FASHION SHOES TRADING and/or TAN TUAN HONG and/or VIOLETA T. MAGAYAGA and/or JEFFREY R. MORALES and/or any of its other proprietor/s, directors, officers, employees and/or occupants of its premises located at S-7, Ed & Joe's Commercial Arcade, No. 153 Quirino Avenue, Parañaque City,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; REPUBLIC ACT NO. 8293 (THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES); INFRINGEMENT OF TRADEMARK; THE ESSENTIAL ELEMENT THEREOF IS THAT THE INFRINGING MARK IS LIKELY TO CAUSE CONFUSION; TESTS IN DETERMINING SIMILARITY AND LIKELIHOOD OF CONFUSION.— The essential element of infringement under R.A. No. 8293 is that the infringing mark is likely to cause confusion. In determining similarity and likelihood of confusion, jurisprudence has developed tests – the Dominancy Test and the Holistic or Totality Test.

2. ID.; ID.; ID.; ID.; ID.; DOMINANCY TEST; FOCUSES ON THE SIMILARITY OF THE PREVALENT OR DOMINANT FEATURES OF THE COMPETING TRADEMARKS THAT MIGHT CAUSE CONFUSION, MISTAKE, AND DECEPTION IN THE MIND OF THE PURCHASING PUBLIC.— The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments.

3. ID.; ID.; ID.; ID.; ID.; HOLISTIC OR TOTALITY TEST; NECESSITATES A CONSIDERATION OF THE ENTIRETY OF THE MARKS AS APPLIED TO THE PRODUCTS, INCLUDING THE LABELS AND PACKAGING, IN DETERMINING CONFUSING SIMILARITY.— [T]he Holistic or Totality Test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words, but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other.

4. ID.; ID.; ID.; ID.; CONFUSION OF MARKS AND TRADE NAMES; TYPES.— Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, *viz.:* (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.

5. ID.; ID.; UNFAIR COMPETITION; EVEN IF NOT ALL THE DETAILS ARE IDENTICAL, AS LONG AS THE GENERAL APPEARANCE OF THE TWO PRODUCTS ARE SUCH THAT ANY ORDINARY PURCHASER WOULD BE DECEIVED, THE IMITATOR SHOULD BE LIABLE.— In *Converse Rubber Corporation v. Jacinto Rubber & Plastic Co., Inc*., this Court, in a case for unfair competition, had opined that even if not all the details are identical, as long as the general appearance of the two products are such that any ordinary purchaser would be deceived, the imitator should be liable x x x.

6. ID.; ID.; INFRINGEMENT OF TRADEMARK; THE DIFFERENCE IN PRICE IS NOT A COMPLETE DEFENSE IN TRADEMARK INFRINGEMENT.— Neither can the difference in price be a complete defense in trademark infringement. x x x Indeed, the registered trademark owner may use its mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The purchasing public might be mistaken in thinking that petitioner had ventured into a lower market segment such that it is not inconceivable for the public to think that Strong or Strong Sport Trail might be associated or connected with petitioner's brand, which scenario is plausible especially since both petitioner and respondent manufacture rubber shoes.

7. ID.; ID.; ID.; THE DEFENDANTS IN CASES OF INFRINGEMENT DO NOT NORMALLY COPY BUT ONLY

MAKE COLORABLE CHANGES.— [T]he protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods. While respondent's shoes contain some dissimilarities with petitioner's shoes, this Court cannot close its eye to the fact that for all intents and purpose, respondent had deliberately attempted to copy petitioner's mark and overall design and features of the shoes. Let it be remembered, that defendants in cases of infringement do not normally copy but only make colorable changes. The most successful form of copying is to employ enough points of similarity to confuse the public, with enough points of difference to confuse the courts.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Verzosa Gutierrez Nolasco Montenegro & Associates for respondents.
Poblador Bautista & Reyes for petitioner-intervenor.

R E S O L U T I O N

PERALTA, *J.*:

For resolution are the twin Motions for Reconsideration[1] filed by petitioner and petitioner-intervenor from the Decision rendered in favor of respondents, dated November 30, 2006.

At the outset, a brief narration of the factual and procedural antecedents that transpired and led to the filing of the motions is in order.

The present controversy arose when petitioner filed with Branch 24 of the Regional Trial Court (RTC) of Manila an application for the issuance of search warrants against an outlet and warehouse operated by respondents for infringement of

[1] *Rollo*, pp. 1046-1071 & 1078-1118.

trademark under Section 155, in relation to Section 170 of Republic Act No. 8293, otherwise known as the *Intellectual Property Code of the Philippines*.[2] In the course of its business, petitioner has registered the trademark "SKECHERS"[3] and the trademark "S" (within an oval design)[4] with the Intellectual Property Office (IPO).

Two search warrants[5] were issued by the RTC and were served on the premises of respondents. As a result of the raid, more than 6,000 pairs of shoes bearing the "S" logo were seized.

Later, respondents moved to quash the search warrants, arguing that there was no confusing similarity between petitioner's "Skechers" rubber shoes and its "Strong" rubber shoes.

On November 7, 2002, the RTC issued an Order[6] quashing the search warrants and directing the NBI to return the seized goods. The RTC agreed with respondent's view that Skechers rubber shoes and Strong rubber shoes have glaring differences such that an ordinary prudent purchaser would not likely be misled or confused in purchasing the wrong article.

Aggrieved, petitioner filed a petition for *certiorari*[7] with the Court of Appeals (CA) assailing the RTC Order. On November 17, 2003, the CA issued a Decision[8] affirming the ruling of the RTC.

Subsequently, petitioner filed the present petition[9] before this Court which puts forth the following assignment of errors:

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[2] An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes. Took effect on January 1, 1998.

[3] Under Registration No. 63364; see *rollo*, p. 107.

[4] Under Registration No. 4-1996-110182; see *rollo*, p. 109.

[5] Search Warrant Nos. 02-2827 and 02-2828; see *rollo*, pp. 144-146, 147-148.

[6] *Rollo*, pp. 173-176.

[7] *Id.* at 195-220.

[8] *Id.* at 72-83.

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

A. WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN CONSIDERING MATTERS OF DEFENSE IN A CRIMINAL TRIAL FOR TRADEMARK INFRINGEMENT IN PASSING UPON THE VALIDITY OF THE SEARCH WARRANT WHEN IT SHOULD HAVE LIMITED ITSELF TO A DETERMINATION OF WHETHER THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN QUASHING THE SEARCH WARRANTS.

B. WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT RESPONDENTS ARE NOT GUILTY OF TRADEMARK INFRINGEMENT IN THE CASE WHERE THE SOLE TRIABLE ISSUE IS THE EXISTENCE OF PROBABLE CAUSE TO ISSUE A SEARCH WARRANT.[10]

In the meantime, petitioner-intervenor filed a Petition-in-Intervention[11] with this Court claiming to be the sole licensed distributor of Skechers products here in the Philippines.

On November 30, 2006, this Court rendered a Decision[12] dismissing the petition.

Both petitioner and petitioner-intervenor filed separate motions for reconsideration.

In petitioner's motion for reconsideration, petitioner moved for a reconsideration of the earlier decision on the following grounds:

(a) THIS HONORABLE COURT MUST RE-EXAMINE THE FACTS OF THIS CASE DUE TO THE SIGNIFICANCE AND REPERCUSSIONS OF ITS DECISION.

(b) COMMERCIAL QUANTITIES OF THE SEIZED ITEMS WITH THE UNAUTHORIZED REPRODUCTIONS OF THE

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

[11] *Id.* at 557-603.

[12] Penned by Associate Justice Minita V. Chico-Nazario, with Chief Justice Artemio V. Panganiban and Associate Justices Consuelo Ynares-Santiago, Ma. Alicia Austria-Martinez and Romeo J. Callejo, Sr. concurring; *id.* at 1032-1045.

"S" TRADEMARK OWNED BY PETITIONER WERE INTENDED FOR DISTRIBUTION IN THE PHILIPPINE MARKET TO THE DETRIMENT OF PETITIONER – RETURNING THE GOODS TO RESPONDENTS WILL ADVERSELY AFFECT THE GOODWILL AND REPUTATION OF PETITIONER.

(c) THE SEARCH WARRANT COURT AND THE COURT OF APPEALS BOTH ACTED WITH GRAVE ABUSE OF DISCRETION.

(d) THE SEARCH WARRANT COURT DID NOT PROPERLY RE-EVALUATE THE EVIDENCE PRESENTED DURING THE SEARCH WARRANT APPLICATION PROCEEDINGS.

(e) THE SOLID TRIANGLE CASE IS NOT APPLICABLE IN THIS CASE, AS IT IS BASED ON A DIFFERENT FACTUAL MILIEU. PRELIMINARY FINDING OF GUILT (OR ABSENCE THEREOF) MADE BY THE SEARCH WARRANT COURT AND THE COURT OF APPEALS WAS IMPROPER.

(f) THE SEARCH WARRANT COURT OVERSTEPPED ITS DISCRETION. THE LAW IS CLEAR. THE DOMINANCY TEST SHOULD BE USED.

(g) THE COURT OF APPEALS COMMITTED ERRORS OF JURISDICTION.[13]

On the other hand, petitioner-intervenor's motion for reconsideration raises the following errors for this Court's consideration, to wit:

(a) THE COURT OF APPEALS AND THE SEARCH WARRANT COURT ACTED CONTRARY TO LAW AND JURISPRUDENCE IN ADOPTING THE ALREADY-REJECTED HOLISTIC TEST IN DETERMINING THE ISSUE OF CONFUSING SIMILARITY;

(b) THE COURT OF APPEALS AND THE SEARCH WARRANT COURT ACTED CONTRARY TO LAW IN HOLDING THAT THERE IS NO PROBABLE CAUSE FOR TRADEMARK INFRINGEMENT; AND

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[13] *Rollo*, p. 1079.

(c) THE COURT OF APPEALS SANCTIONED THE TRIAL COURT'S DEPARTURE FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS WHEN IT UPHELD THE QUASHAL OF THE SEARCH WARRANT ON THE BASIS SOLELY OF A FINDING THAT THERE IS NO CONFUSING SIMILARITY.[14]

A perusal of the motions submitted by petitioner and petitioner-intervenor would show that the primary issue posed by them dwells on the issue of whether or not respondent is guilty of trademark infringement.

After a thorough review of the arguments raised herein, this Court reconsiders its earlier decision.

The basic law on trademark, infringement, and unfair competition is Republic Act (R.A.) No. 8293. Specifically, Section 155 of R.A. No. 8293 states:

Remedies; Infringement. — Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, **or colorable imitation of a registered mark or the same container or a dominant feature thereof** in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection **with which such use is likely to cause confusion, or to cause mistake, or to deceive**; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a **dominant feature thereof** and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which **such use is likely to cause confusion, or to cause mistake, or to deceive**, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided,

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[14] *Id.* at 1047-1048.

> That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.[15]

The essential element of infringement under R.A. No. 8293 is that the infringing mark is likely to cause confusion. In determining similarity and likelihood of confusion, jurisprudence has developed tests — the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments.[16]

In contrast, the Holistic or Totality Test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words, but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other.[17]

Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, *viz.:* (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase

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[15] Emphasis supplied.

[16] *Prosource International, Inc. v. Horphag Research Management SA*, G.R. No. 180073, November 25, 2009, 605 SCRA 523, 531; *McDonald's Corporation v. MacJoy Fastfood Corporation*, G.R. No. 166115, February 2, 2007, 514 SCRA 95, 106; *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, 480 Phil. 402, 434 (2004).

[17] *Philip Morris, Inc. v. Fortune Tobacco Corporation*, G.R. No. 158589, June 27, 2006, 493 SCRA 333, 357.

one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.[18]

Applying the Dominancy Test to the case at bar, this Court finds that the use of the stylized "S" by respondent in its Strong rubber shoes infringes on the mark already registered by petitioner with the IPO. While it is undisputed that petitioner's stylized "S" is within an oval design, to this Court's mind, the dominant feature of the trademark is the stylized "S," as it is precisely the stylized "S" which catches the eye of the purchaser. Thus, even if respondent did not use an oval design, the mere fact that it used the same stylized "S", the same being the dominant feature of petitioner's trademark, already constitutes infringement under the Dominancy Test.

This Court cannot agree with the observation of the CA that the use of the letter "S" could hardly be considered as highly identifiable to the products of petitioner alone. The CA even supported its conclusion by stating that the letter "S" has been used in so many existing trademarks, the most popular of which is the trademark "S" enclosed by an inverted triangle, which the CA says is identifiable to Superman. Such reasoning, however, misses the entire point, which is that respondent had used a stylized "S," which is the same stylized "S" which petitioner has a registered trademark for. The letter "S" used in the Superman logo, on the other hand, has a block-like tip on the upper portion and a round elongated tip on the lower portion. Accordingly, the comparison made by the CA of the letter "S"

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[18] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, *supra* note 16, at 428, citing *Sterling Products International, Incorporated v. Farbenfabriken Bayer Aktiengesellschaft, et al.*, 137 Phil. 838, 852 (1969).

used in the Superman trademark with petitioner's stylized "S" is not appropriate to the case at bar.

Furthermore, respondent did not simply use the letter "S," but it appears to this Court that based on the font and the size of the lettering, the stylized "S" utilized by respondent is the very same stylized "S" used by petitioner; a stylized "S" which is unique and distinguishes petitioner's trademark. Indubitably, the likelihood of confusion is present as purchasers will associate the respondent's use of the stylized "S" as having been authorized by petitioner or that respondent's product is connected with petitioner's business.

Both the RTC and the CA applied the Holistic Test in ruling that respondent had not infringed petitioner's trademark. For its part, the RTC noted the following supposed dissimilarities between the shoes, to *wit*:

1. The mark "S" found in Strong Shoes is not enclosed in an "oval design."
2. The word "Strong" is conspicuously placed at the backside and insoles.
3. The hang tags and labels attached to the shoes bears the word "Strong" for respondent and "Skechers U.S.A." for private complainant;
4. Strong shoes are modestly priced compared to the costs of Skechers Shoes.[19]

While there may be dissimilarities between the appearances of the shoes, to this Court's mind such dissimilarities do not outweigh the stark and blatant similarities in their general features. As can be readily observed by simply comparing petitioner's Energy[20] model and respondent's Strong[21] rubber shoes, respondent also used the color scheme of blue, white and gray utilized by petitioner. Even the design and "wavelike" pattern of the midsole and outer sole of respondent's shoes are very similar to petitioner's shoes, if not exact patterns thereof.

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[19] *Rollo*, p. 174.

[20] See *rollo*, pp. 498-500, 572-574.

[21] *Id.*

At the side of the midsole near the heel of both shoes are two elongated designs in practically the same location. Even the outer soles of both shoes have the same number of ridges, five at the back and six in front. On the side of respondent's shoes, near the upper part, appears the stylized "S," placed in the exact location as that of the stylized "S" on petitioner's shoes. On top of the "tongue" of both shoes appears the stylized "S" in practically the same location and size. Moreover, at the back of petitioner's shoes, near the heel counter, appears "Skechers Sport Trail" written in white lettering. However, on respondent's shoes appears "Strong Sport Trail" noticeably written in the same white lettering, font size, direction and orientation as that of petitioner's shoes. On top of the heel collar of petitioner's shoes are two grayish-white semi-transparent circles. Not surprisingly, respondent's shoes also have two grayish-white semi-transparent circles in the exact same location.

Based on the foregoing, this Court is at a loss as to how the RTC and the CA, in applying the holistic test, ruled that there was no colorable imitation, when it cannot be any more clear and apparent to this Court that there is colorable imitation. The dissimilarities between the shoes are too trifling and frivolous that it is indubitable that respondent's products will cause confusion and mistake in the eyes of the public. Respondent's shoes may not be an exact replica of petitioner's shoes, but the features and overall design are so similar and alike that confusion is highly likely.

In *Converse Rubber Corporation v. Jacinto Rubber & Plastic Co., Inc.*,[22] this Court, in a case for unfair competition, had opined that even if not all the details are identical, as long as the general appearance of the two products are such that any ordinary purchaser would be deceived, the imitator should be liable, to wit:

> From said examination, We find the shoes manufactured by defendants to contain, as found by the trial court, practically all the features of those of the plaintiff Converse Rubber Corporation and

[22] 186 Phil. 85 (1980).

manufactured, sold or marketed by plaintiff Edwardson Manufacturing Corporation, except for their respective brands, of course. We fully agree with the trial court that "the respective designs, shapes, the colors of the ankle patches, the bands, the toe patch and the soles of the two products are exactly the same ... (such that) at a distance of a few meters, it is impossible to distinguish "Custombuilt" from "Chuck Taylor." These elements are more than sufficient to serve as basis for a charge of unfair competition. Even if not all the details just mentioned were identical, with the general appearances alone of the two products, any ordinary, or even perhaps even a not too perceptive and discriminating customer could be deceived, and, therefore, Custombuilt could easily be passed off for Chuck Taylor. Jurisprudence supports the view that under such circumstances, the imitator must be held liable. x x x[23]

Neither can the difference in price be a complete defense in trademark infringement. In *McDonald's Corporation v. L.C. Big Mak Burger. Inc.*,[24] this Court held:

> Modern law recognizes that the protection to which the owner of a trademark is entitled is not limited to guarding his goods or business from actual market competition with identical or similar products of the parties, but extends to all cases in which the use by a junior appropriator of a trade-mark or trade-name is likely to lead to a confusion of source, as where prospective purchasers would be misled into thinking that the complaining party has extended his business into the field (see 148 ALR 56 *et seq*; 53 Am. Jur. 576) or is in any way connected with the activities of the infringer; or when it forestalls the normal potential expansion of his business (v. 148 ALR 77, 84; 52 Am. Jur. 576, 577). x x x[25]

Indeed, the registered trademark owner may use its mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market.[26] The

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[23] *Id.* at 94-95.

[24] *Supra* note 16.

[25] *Id.* at 432.

[26] *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.*, G.R. No. 190065, August 16, 2010.

purchasing public might be mistaken in thinking that petitioner had ventured into a lower market segment such that it is not inconceivable for the public to think that Strong or Strong Sport Trail might be associated or connected with petitioner's brand, which scenario is plausible especially since both petitioner and respondent manufacture rubber shoes.

Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.[27] While respondent's shoes contain some dissimilarities with petitioner's shoes, this Court cannot close its eye to the fact that for all intents and purpose, respondent had deliberately attempted to copy petitioner's mark and overall design and features of the shoes. Let it be remembered, that defendants in cases of infringement do not normally copy but only make colorable changes.[28] The most successful form of copying is to employ enough points of similarity to confuse the public, with enough points of difference to confuse the courts.[29]

WHEREFORE, premises considered, the Motion for Reconsideration is *GRANTED*. The Decision dated November 30, 2006 is *RECONSIDERED* and *SET ASIDE*.

SO ORDERED.

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

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[27] *Berris Agricultural Co., Inc., v. Norvy Abyadang*, G.R. No. 183404, October 13, 2010.

[28] *Del Monte Corporation v. Court of Appeals*, 260 Phil. 435, 443 (1990).

[29] *Id*.

FIRST DIVISION

[G.R. No. 170195. March 28, 2011]

SOCIAL SECURITY COMMISSION and SOCIAL SECURITY SYSTEM, *petitioners, vs.* **TERESA G. FAVILA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 1161 (SOCIAL SECURITY LAW); BENEFICIARIES; DEPENDENT SPOUSE; FOR A SPOUSE TO QUALIFY AS A PRIMARY BENEFICIARY, HE OR SHE MUST NOT ONLY BE A LEGITIMATE SPOUSE BUT ALSO ONE WHO IS DEPENDENT UPON THE MEMBER FOR SUPPORT.— [Pursuant to RA 1161,] it is plain that for a spouse to qualify as a primary beneficiary under paragraph (k) thereof, he/she must not only be a legitimate spouse but also a dependent as defined under paragraph (e), that is, one who is dependent upon the member for support. Paragraphs (e) and (k) of Section 8 of RA 1161 are very clear. "Hence, we need only apply the law. Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain meaning rule or *verba legis*, derived from the maxim *index animo sermo est* (speech is the index of intention), rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or, from the words of a statute there should be no departure."

2. REMEDIAL LAW; EVIDENCE; MERE ALLEGATION IS NOT EVIDENCE AND IS NOT EQUIVALENT TO PROOF.— "The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence." "Mere uncorroborated hearsay or rumor does not constitute substantial evidence."

3. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 1161 (SOCIAL SECURITY LAW); BENEFICIARIES;

DEPENDENT SPOUSE; THE TERM "DEPENDENT," DEFINED.— [W]e x x x find untenable Teresa's assertion that being the legal wife, she is presumed dependent upon Florante for support. In *Re: Application for Survivor's Benefits of Manlavi*, this Court defined "dependent" as "one who derives his or her main support from another [or] relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power or aid of someone else."

4. ID.; ID.; ID.; ID.; A WIFE WHO IS ALREADY SEPARATED *DE FACTO* FROM HER HUSBAND CANNOT BE SAID TO BE DEPENDENT FOR SUPPORT UPON THE HUSBAND, ABSENT ANY SHOWING TO THE CONTRARY.— [W]e declared in *Aguas* that "the obvious conclusion is that a wife who is already separated *de facto* from her husband cannot be said to be 'dependent for support' upon the husband, absent any showing to the contrary. Conversely, if it is proved that the husband and wife were still living together at the time of his death, it would be safe to presume that she was dependent on the husband for support, unless it is shown that she is capable of providing for herself."

5. ID.; ID.; ID.; WHOEVER CLAIMS ENTITLEMENT TO THE BENEFITS PROVIDED BY LAW SHOULD ESTABLISH HIS OR HER RIGHT THERETO BY SUBSTANTIAL EVIDENCE; CASE AT BAR.— In this case, aside from Teresa's bare allegation that she was dependent upon her husband for support and her misplaced reliance on the presumption of dependency by reason of her valid and then subsisting marriage with Florante, Teresa has not presented sufficient evidence to discharge her burden of proving that she was dependent upon her husband for support at the time of his death. She could have done this by submitting affidavits of reputable and disinterested persons who have knowledge that during her separation with Florante, she does not have a known trade, business, profession or lawful occupation from which she derives income sufficient for her support and such other evidence tending to prove her claim of dependency. While we note from the x x x SSS Memorandum that Teresa submitted affidavits executed by Napoleon Favila and Josefina Favila, same only pertained to the fact that she never remarried nor cohabited with another man. On the contrary, what is clear is

that she and Florante had already been separated for about 17 years prior to the latter's death as Florante was in fact, living with his common law wife when he died. Suffice it to say that "[w]hoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence." Hence, for Teresa's failure to show that despite their separation she was dependent upon Florante for support at the time of his death, Teresa cannot qualify as a primary beneficiary. Hence, she is not entitled to the death benefits accruing on account of Florante's death.

6. ID.; REPUBLIC ACT NO. 8282; SOCIAL SECURITY SYSTEM (SSS); THE INVESTIGATIONS CONDUCTED BY SSS ARE APPROPRIATE IN ORDER TO ENSURE THAT THE BENEFITS PROVIDED UNDER THE SOCIAL SECURITY LAW ARE RECEIVED BY THE RIGHTFUL BENEFICIARIES.— [W]e do not agree with the CA's pronouncement that the investigations conducted by SSS violate a person's right to privacy. SSS, as the primary institution in charge of extending social security protection to workers and their beneficiaries is mandated by Section 4(b)(7) of RA 8282 to require reports, compilations and analyses of statistical and economic data and to make an investigation as may be needed for its proper administration and development. Precisely, the investigations conducted by SSS are appropriate in order to ensure that the benefits provided under the SS Law are received by the rightful beneficiaries. It is not hard to see that such measure is necessary for the system's proper administration, otherwise, it will be swamped with bogus claims that will pointlessly deplete its funds. Such scenario will certainly frustrate the purpose of the law which is to provide covered employees and their families protection against hazards of disability, sickness, old age and death, with a view to promoting their well-being in the spirit of social justice. Moreover and as correctly pointed out by SSC, such investigations are likewise necessary to carry out the mandate of Section 15 of the SS Law.

APPEARANCES OF COUNSEL

Milagros M. Pagayatan & Nelia B. Lorenzo for Social Security Commission.

Public Attorney's Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A spouse who claims entitlement to death benefits as a primary beneficiary under the Social Security Law must establish two qualifying factors, to wit: (1) that he/she is the legitimate spouse; and (2) that he/she is dependent upon the member for support.[1]

This Petition for Review on *Certiorari* assails the Decision[2] dated May 24, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 82763 which reversed and set aside the Resolution[3] dated June 4, 2003 and Order[4] dated January 21, 2004 of the Social Security Commission (SSC) in SSC Case No. 8-15348-02. Likewise assailed is the CA Resolution[5] dated October 17, 2005 denying the Motion for Reconsideration thereto.

Factual Antecedents

On August 5, 2002, respondent Teresa G. Favila (Teresa) filed a Petition[6] before petitioner SSC docketed as SSC Case No. 8-15348-02. She averred therein that after she was married to Florante Favila (Florante) on January 17, 1970, the latter designated her as the sole beneficiary in the E-1 Form he submitted before petitioner Social Security System (SSS), Quezon City Branch on June 30, 1970. When they begot their children Jofel, Floresa and Florante II, her husband likewise designated each one of them as beneficiaries. Teresa further averred that when Florante died on February 1, 1997, his pension benefits under the SSS

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[1] *Social Security System v. Aguas*, G.R. No. 165546, February 27, 2006, 483 SCRA 383,400.

[2] CA *rollo*, pp. 93-106; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Regalado E. Maambong.

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

[4] *Id.* at 34-36.

[5] *Id.* at 125-126.

[6] *Id.* at 21-23.

were given to their only minor child at that time, Florante II, but only until his emancipation at age 21. Believing that as the surviving legal wife she is likewise entitled to receive Florante's pension benefits, Teresa subsequently filed her claim for said benefits before the SSS. The SSS, however, denied the claim in a letter dated January 31, 2002, hence, the petition.

In its Answer,[7] SSS averred that on May 6, 1999, the claim for Florante's pension benefits was initially settled in favor of Teresa as guardian of the minor Florante II. Per its records, Teresa was paid the monthly pension for a total period of 57 months or from February 1997 to October 2001 when Florante II reached the age of 21. The claim was, however, re-adjudicated on July 11, 2002 and the balance of the five-year guaranteed pension was again settled in favor of Florante II.[8] SSS also alleged that Estelita Ramos, sister of Florante, wrote a letter[9] stating that her brother had long been separated from Teresa. She alleged therein that the couple lived together for only ten years and then decided to go their separate ways because Teresa had an affair with a married man with whom, as Teresa herself allegedly admitted, she slept with four times a week. SSS also averred that an interview conducted in Teresa's neighborhood in Tondo, Manila on September 18, 1998 revealed that although she did not cohabit with another man after her separation with Florante, there were rumors that she had an affair with a police officer. To support Teresa's non-entitlement to the benefits claimed, SSS cited the provisions of Sections 8(k) and 13 of Republic Act (RA) No. 1161, as amended otherwise known as Social Security (SS) Law.[10]

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

[8] See SSS's Diliman Processing Center Routing Slip dated August 20, 2002, *id.* at 54.

[9] *Id.* at 50.

[10] Sections 8 (k) and 13 thereof reads:

Section 8. ***Terms Defined.*** **–** For the purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

x x x x x x x x x

Ruling of the Social Security Commission

In a Resolution[11] dated June 4, 2003, SSC held that the surviving spouse's entitlement to an SSS member's death benefits is dependent on two factors which must concur at the time of the latter's death, to wit: (1) legality of the marital relationship; and (2) dependency for support. As to dependency for support, the SSC opined that same is affected by factors such as separation *de facto* of the spouses, marital infidelity and such other grounds sufficient to disinherit a spouse under the law. Thus, although Teresa is the legal spouse and one of Florante's designated beneficiaries, the SSC ruled that she is disqualified from claiming the death benefits because she was deemed not dependent for support from Florante due to marital infidelity. Under Section 8(k) of the SS Law, the dependent spouse until she remarries is entitled to death benefits as a primary beneficiary, together with the deceased member's legitimate minor children. According to SSC, the word "remarry" under said provision has been interpreted as to include a spouse who cohabits with a person other than his/her deceased spouse or is in an illicit relationship. This is for the reason that no support is due to such a spouse and to

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(k) *Beneficiaries* – The dependent spouse until he remarries and dependent children, who shall be primary beneficiaries. In their absence, the dependent parents and, subject to the restrictions imposed on dependent children, the legitimate descendants and illegitimate children who shall be the secondary beneficiaries. In the absence of any of the foregoing, any other person designated by the covered employee as secondary beneficiary.

Section 13. ***Death Benefits.*** **–** Upon the covered employee's death, his primary beneficiaries shall be entitled to the monthly pension and his dependents to the dependents' pension: Provided, That he has paid at least thirty-six monthly contributions prior to the semester of death: Provided, further, That if the foregoing condition is not satisfied his primary beneficiaries shall be entitled to a lump sum benefit equivalent to thirty-five times the monthly pension: Provided, further, That if he has no primary beneficiaries, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to twenty times the monthly pension: Provided, however, That the minimum death benefits shall not be less than the total contributions paid by him and his employer on his behalf nor less than one thousand pesos: Provided, finally, That the beneficiaries of the covered employee who dies without having paid at least three monthly contributions shall be entitled to the minimum benefit.

[11] CA *rollo*, pp. 27-30.

allow him/her to enjoy the member's death benefits would be tantamount to circumvention of the law. Even if a spouse did not cohabit with another, SSC went on to state that for purposes of the SS Law, it is sufficient that the separation in-fact of the spouses was precipitated by an adulterous act since the actual absence of support from the member is evident from such separation. Notable in this case is that while Teresa denied having remarried or cohabited with another man, she did not, however, deny her having an adulterous relationship. SSC therefore concluded that Teresa was not dependent upon Florante for support and consequently disqualified her from enjoying her husband's death benefits.

SSC further held that Teresa did not timely contest her non-entitlement to the award of benefits. It was only when Florante II's pension was stopped that she deemed it wise to file her claim. For SSC, Teresa's long silence led SSS to believe that she really suffered from a disqualification as a beneficiary, otherwise she would have immediately protested her non-entitlement. It thus opined that Teresa is now estopped from claiming the benefits. Hence, SSC dismissed the petition for lack of merit.

As Teresa's Motion for Reconsideration[12] of said Resolution was also denied by SSC in an Order[13] dated January 21, 2004, she sought recourse before the CA through a Petition for Review[14] under Rule 43.

Ruling of the Court of Appeals

Before the CA, Teresa insisted that SSS should have granted her claim for death benefits because she is undisputedly the legal surviving spouse of Florante and is therefore entitled to such benefits as primary beneficiary. She claimed that the SSC's finding that she was not dependent upon Florante for support is unfair because the fact still remains that she was legally married

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[12] *Id.* at 31-32.

[13] *Id.* at 34-36.

[14] *Id.* at 8-20.

to Florante and that her alleged illicit affair with another man was never sufficiently established. In fact, SSS admitted that there was no concrete evidence or proof of her amorous relationship with another man. Moreover, Teresa found SSS's strict interpretation of the SS Law as not only anti-labor but also anti-family. It is anti-labor in the sense that it does not work to the benefit of a deceased employee's primary beneficiaries and anti-family because in denying benefits to surviving spouses, it destroys family solidarity. In sum, Teresa prayed for the reversal and setting aside of the assailed Resolution and Order of the SSC.

The SSC and the SSS through the Office of the Solicitor General (OSG) filed their respective Comments[15] to the petition.

SSC contended that the word "spouse" under Section 8(k) of the SS Law is qualified by the word "dependent". Thus, to be entitled to death benefits under said law, a surviving spouse must have been dependent upon the member spouse for support during the latter's lifetime including the very moment of contingency. According to it, the fact of dependency is a mandatory requirement of law. If it is otherwise, the law would have simply used the word "spouse" without the descriptive word "dependent". In this case, SSC emphasized that Teresa never denied the fact that she and Florante were already separated and living in different houses when the contingency happened. Given this fact and since the conduct of investigation is standard operating procedure for SSS, it being under legal obligation to determine prior to the award of death benefit whether the supposed beneficiary is actually receiving support from the member or if such support was rightfully withdrawn prior to the contingency, SSS conducted an investigation with respect to the couple's separation. And as said investigation revealed tales of Teresa's adulterous relationship with another man, SSS therefore correctly adjudicated the entire death benefits in favor of Florante II.

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[15] SSC Comment, *id.* at 45-54; OSG's Comment, *id.* at 71-77.

To negate Teresa's claim that SSS failed to establish her marital infidelity, SSC enumerated the following evidence: (1) the letter[16] of Florante's sister, Estelita Ramos, stating that the main reasons why Teresa and Florante separated after only 10 years of marriage were Teresa's adulterous relationship with another man and her propensity for gambling; (2) the Memorandum[17] dated August 30, 2002 of SSS Senior Analysts Liza Agilles and Jana Simpas which ran through the facts in connection with the claim for death benefits accruing from Florante's death. It indicates therein, among others, that based on interviews conducted in Teresa's neighborhood, she did not cohabit with another man after her separation from her husband although there were rumors that she and a certain police officer had an affair. However, there is not enough proof to establish their relationship as Teresa and her paramour did not live together as husband and wife; and (3) the field investigation report[18] of SSS Senior Analyst Fernando F. Nicolas which yielded the same findings. The SSC deemed the foregoing evidence as substantial to support the conclusion that Teresa indeed had an illicit relationship with another man.

SSC also defended SSS's interpretation of the SS law and argued that it is neither anti-labor nor anti-family. It is not anti-labor because the subject matter of the case is covered by the SS Law and hence, Labor Law has no application. It is likewise not anti-family because SSS has nothing to do with Teresa's separation from her husband which resulted to the latter's withdrawal of support for her. At any rate, SSC advanced that even if Teresa is entitled to the benefits claimed, same have already been received in its entirety by Florante II so that no more benefits are due to Florante's other beneficiaries. Hence, SSC prayed for the dismissal of the petition.

For its part, the OSG likewise believed that Teresa is not entitled to the benefits claimed as she lacks the requirement

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[16] *Id.* at 50.

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

[18] *Id.* at 53.

that the wife must be dependent upon the member for support. This is in view of the rule that beneficiaries under the SS Law need not be the legal heirs but those who are dependent upon him for support. Moreover, it noted that Teresa did not file a protest before the SSS to contest the award of the five-year guaranteed pension to their son Florante II. It posited that because of this, Teresa cannot raise the matter for the first time before the courts. The OSG also believed that no further benefits are due to Florante's other beneficiaries considering that the balance of the five-year guaranteed pension has already been settled.

In a Decision[19] dated May 24, 2005, the CA found Teresa's petition impressed with merit. It gave weight to the fact that she is a primary beneficiary because she is the lawful surviving spouse of Florante and in addition, she was designated by Florante as such beneficiary. There was no legal separation or annulment of marriage that could have disqualified her from claiming the death benefits and that her designation as beneficiary had not been invalidated by any court of law. The CA cited *Social Security System v. Davac*[20] where it was held that it is only when there is no designation of beneficiary or when the designation is void that the SSS would have to decide who is entitled to claim the benefits. It opined that once a spouse is designated by an SSS member as his/her beneficiary, same forecloses any inquiry as to whether the spouse is indeed a dependent deriving support from the member. Thus, when SSS conducted an investigation to determine whether Teresa is indeed dependent upon Florante, SSS was unilaterally adding a requirement not imposed by law which makes it very difficult for designated primary beneficiaries to claim for benefits. To make things worse, the result of said investigation which became the basis of Teresa's non-entitlement to the benefits claimed was culled from unfounded rumors.

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[19] *Id.* at 93-106.

[20] 124 Phil. 255 (1966).

Moreover, the CA saw SSS's conduct of investigations to be violative of the constitutional right to privacy. It lamented that SSS has no power to investigate and pry into the member's and his/her family's personal lives and should cease and desist from conducting such investigations. Ultimately, the CA reversed and set aside the assailed Resolution and Order of the SSC and directed SSS to pay Teresa's monetary claims which included the monthly pension due her as the surviving spouse and the lump sum benefit equivalent to thirty-six times the monthly pension.

SSC filed its Motion for Reconsideration[21] of said Decision but same was denied in a Resolution[22] dated October 17, 2005. Impleading SSS as co-petitioner, SSC thus filed this petition for review on *certiorari.*

Issue

Is Teresa a primary beneficiary in contemplation of the Social Security Law as to be entitled to death benefits accruing from the death of Florante?

Petitioners' Arguments

SSC reiterates the argument that to be entitled to death benefits, a surviving spouse must have been actually dependent for support upon the member spouse during the latter's lifetime including the very moment of contingency. To it, this is clearly the intention of the legislature; otherwise, Section 8(k) of the SS law would have simply stated "spouse" without the descriptive word "dependent". Here, although Teresa is without question Florante's legal spouse, she is not the "dependent spouse" referred to in the said provision of the law. Given the reason for the couple's separation for about 17 years prior to Florante's death and in the absence of proof that during said period Teresa relied upon Florante for support, there is therefore no reason to infer that Teresa is a dependent spouse entitled to her husband's death benefits.

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[21] CA *rollo*, pp. 107-114.

[22] *Id.* at 125-126.

SSC adds that in the process of determining non-dependency status of a spouse, conviction of a crime involving marital infidelity is not an absolute necessity. It is sufficient for purposes of the award of death benefits that a thorough investigation was conducted by SSS through interviews of impartial witnesses and that same showed that the spouse-beneficiary committed an act of marital infidelity which caused the member to withdraw support from his spouse. In this case, no less than Florante's sister, who does not stand to benefit from the present controversy, revealed that Teresa frequented a casino and was disloyal to her husband so that they separated after only 10 years of marriage. This was affirmed through the interview conducted in Teresa's neighborhood. Hence, it is not true that Teresa's marital infidelity was not sufficiently proven.

Likewise, SSC contends that contrary to the CA's posture, a member's designation of a primary beneficiary does not guarantee the latter's entitlement to death benefits because such entitlement is determined only at the time of happening of the contingency. This is because there may have been events which supervened subsequent to the designation which would otherwise disqualify the person designated as beneficiary such as emancipation of a member's child or separation from his/her spouse. This is actually the same reason why SSS must conduct an investigation of all claims for benefits.

Moreover, SSC justifies SSS's conduct of investigation and argues that said office did not intrude into Florante's and his family's personal lives as the investigation did not aggravate the situation insofar as Teresa's relationship with her deceased husband was concerned. It merely led to the discovery of the true state of affairs between them so that based on it, the death benefits were awarded to the rightful primary beneficiary, Florante II. Clearly, such an investigation is an essential part of adjudication process, not only in this case but also in all claims for benefits filed before SSS. Thus, SSC prays for the setting aside of the assailed CA Decision and Resolution.

Respondent's Arguments

To support her entitlement to the death benefits claimed, Teresa cited *Ceneta v. Social Security System*,[23] a case decided by the CA which declared, *viz:*

> Clearly then, the term dependent spouse, who must not re-marry in order to be entitled to the SSS death benefits accruing from the death of his/her spouse, refers to the legal spouse who, under the law, is entitled to receive support from the other spouse.
>
> Indubitably, petitioner, having been legally married to the deceased SSS member until the latter's death and despite his subsequent marriage to respondent Carolina, is deemed dependent for support under Article 68 of the Family Code. Said provision reads:
>
> > 'The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support'
>
> Based on said law, petitioner is, therefore, entitled to the claimed death benefits. Her marriage to the deceased not having been lawfully severed, the law disputably presumes her to be continually dependent for support.
>
> No evidence or even a mere inference can be adduced to prove that petitioner ceased to derive all her needs indispensable for her sustenance, and thus, she remains a legal dependent. A dependent spouse is primary beneficiary entitled to the death benefits of a deceased SSS member spouse unless he or she remarries. A mere allegation of adultery not substantially proven can not validly deprive petitioner of the support referred to under the law, and consequently, of her claim under the SSS Law.

Thus, being the legal wife, Teresa asserts that she is presumed to be dependent upon Florante for support. The bare allegation of Estelita that she had an affair with another man is insufficient to deprive her of support from her husband under the law and, conversely, of the death benefits from SSS. Moreover, Teresa points out that despite their separation and the rumors regarding

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[23] CA-G.R. SP No. 72505, October 15, 2003; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Ruben T. Reyes and Edgardo P. Cruz.

her infidelity, Florante did not withdraw her designation as primary beneficiary. Under this circumstance, Teresa believes that Florante really intended for her to receive the benefits from SSS.

Teresa also agrees with the CA's finding that SSS unilaterally added to the requirements of the law the condition that a surviving spouse must be actually dependent for support upon the member spouse during the latter's lifetime. She avers that this could not have been the lawmakers' intention as it would make it difficult or even impossible for beneficiaries to claim for benefits under the SS Law. She stresses that courts (or quasi-judicial agencies for that matter), may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by lawmakers. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention had been called to the omission. Hence, Teresa prays that the assailed CA Decision and Resolution be affirmed *in toto*.

Our Ruling

We find merit in the petition.

The law in force at the time of Florante's death was RA 1161. Section 8 (e) and (k) of said law provides:

Section 8. *Terms Defined.* For the purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

x x x x x x x x x

(e) *Dependent* – The legitimate, legitimated or legally adopted child who is unmarried, not gainfully employed and not over twenty-one years of age, or over twenty-one years of age, provided that he is congenitally incapacitated and incapable of self-support, physically or mentally; **the legitimate spouse dependent for support upon the employee**; and the legitimate parents wholly dependent upon the covered employee for regular support.

x x x x x x x x x

(k) *Beneficiaries* – The **dependent spouse** until he remarries and dependent children, who shall be the primary beneficiaries. In

their absence, the dependent parents and, subject to the restrictions imposed on dependent children, the legitimate descendants and illegitimate children who shall be the secondary beneficiaries. In the absence of any of the foregoing, any other person designated by the covered employee as secondary beneficiary. (Emphasis ours.)

From the above-quoted provisions, it is plain that for a spouse to qualify as a primary beneficiary under paragraph (k) thereof, he/she must not only be a legitimate spouse but also a dependent as defined under paragraph (e), that is, one who is dependent upon the member for support. Paragraphs (e) and (k) of Section 8 of RA 1161 are very clear. "Hence, we need only apply the law. Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain meaning rule or *verba legis*, derived from the maxim *index animo sermo est* (speech is the index of intention), rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or, from the words of a statute there should be no departure."[24]

Thus, in *Social Security System v. Aguas*[25] we held that:

[I]t bears stressing that for her (the claimant) to qualify as a primary beneficiary, she must prove that she was 'the legitimate spouse dependent for support from the employee.' The claimant-spouse must therefore establish two qualifying factors: (1) that she is the legitimate spouse, and (2) that she is dependent upon the member for support. x x x

Here, there is no question that Teresa was Florante's legal wife. What is at point, however, is whether Teresa is dependent upon Florante for support in order for her to fall under the term "dependent spouse" under Section 8(k) of RA 1161.

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[24] *Signey v. Social Security System*, G.R. No. 173582, January 28, 2008, 542 SCRA 629, 637.

[25] *Supra* note 1 at 400.

What the SSC relies on in concluding that Teresa was not dependent upon Florante for support during their separation for 17 years was its findings that Teresa maintained an illicit relationship with another man. Teresa however counters that such illicit relationship has not been sufficiently established and, hence, as the legal wife, she is presumed to be continually dependent upon Florante for support.

We agree with Teresa that her alleged affair with another man was not sufficiently established. The Memorandum of SSS Senior Analysts Liza Agilles and Jana Simpas reveals that it was Florante who was in fact living with a common law wife, Susan Favila (Susan) and their three minor children at the time of his death. Susan even filed her own claim for death benefits with the SSS but same was, however, denied. With respect to Teresa, we quote the pertinent portions of said Memorandum, *viz*:

SUSAN SUBMITTED A LETTER SIGNED BY ESTELITA RAMOS, ELDER SISTER OF THE DECEASED STATING THAT MEMBER WAS SEPARATED FROM TERESA AFTER 10 YEARS OF LIVING IN FOR THE REASONS THAT HIS WIFE HAD COHABITED WITH A MARRIED MAN. ALSO, PER ESTELITA, THE WIFE HERSELF ADMITTED THAT THE MAN SLEPT WITH HER 4 TIMES A WEEK.

TERESA SUBMITTED AN AFFIDAVIT EXECUTED BY NAPOLEON AND JOSEFINA, BROTHER AND SISTER (IN) LAW, RESPECTIVELY, OF THE DECEASED THAT TERESA HAS NEVER RE-MARRIED NOR COHABITED WITH ANOTHER MAN.

BASED ON THE INTERVIEW (DATED 9/18/98) CONDUCTED FROM THE NEIGHBORHOOD OF TERESA AND BGY. KAGAWAD IN TONDO, MANILA, **IT WAS ESTABLISHED THAT TERESA DID NOT COHABIT WITH ANOTHER MAN AFTER THE SEPARATION ALTHOUGH THERE ARE RUMORS THAT SHE AND A CERTAIN POLICE OFFICER HAD AN AFFAIR. BUT [NOT] ENOUGH PROOF TO ESTABLISH THEIR RELATIONSHIP SINCE THEY DID NOT LIVE-IN AS HUSBAND AND WIFE.**

BASED ON THE INTERVIEW WITH JOSEFINA FAVILA, MEMBER AND TERESA WERE SEPARATED FOR A NUMBER OF YEARS AND THAT **SHE HAD NO KNOWLEDGE IF TERESA**

COHABITED WITH ANOTHER MAN ALTHOUGH SHE HEARD OF THE RUMORS THAT SAID WIFE HAD AN AFFAIR WITH ANOTHER MAN. NAPOLEON WAS NOT INTERVIEWED. (Emphasis ours)

While SSC believes that the foregoing constitutes substantial evidence of Teresa's amorous relationship, we, however, find otherwise. It is not hard to see that Estelita's claim of Teresa's cohabitation with a married man is a mere allegation without proof. Likewise, the interviews conducted by SSS revealed rumors only that Teresa had an affair with a certain police officer. Notably, not one from those interviewed confirmed that such an affair indeed existed. "The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."[26] "Mere uncorroborated hearsay or rumor does not constitute substantial evidence."[27] Remarkably, the Memorandum itself stated that there is not enough proof to establish Teresa's alleged relationship with another man since they did not live as husband and wife.

This notwithstanding, we still find untenable Teresa's assertion that being the legal wife, she is presumed dependent upon Florante for support. In *Re: Application for Survivor's Benefits of Manlavi*,[28] this Court defined "dependent" as "one who derives his or her main support from another [or] relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power or aid of someone else." Although therein, the wife's marriage to the deceased husband was not dissolved prior to the latter's death, the Court denied the wife's claim for survivorship benefits from the Government Service Insurance System (GSIS) because the wife abandoned her family to live with other men for more

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[26] *De Jesus v. Guerrero III*, G.R. No. 171491, September 4, 2009, 598 SCRA 341, 350.

[27] *Rizal Workers Union v. Hon. Calleja*, 264 Phil. 805, 811 (1990) citing *Ang Tibay v. The Court of Industrial Relations and National Labor Union, Inc.*, 69 Phil. 635 (1940).

[28] 405 Phil 152, 160 (2001).

than 17 years until her husband died. Her whereabouts was unknown to her family and she never attempted to communicate with them or even check up on the well-being of her daughter with the deceased. From these, the Court concluded that the wife during said period was not dependent on her husband for any support, financial or otherwise, hence, she is not a dependent within the contemplation of RA 8291[29] as to be entitled to survivorship benefits. It is worthy to note that under Section 2(f) RA 8291, a legitimate spouse dependent for support is likewise included in the enumeration of dependents and under Section 2(g), the legal dependent spouse in the enumeration of primary beneficiaries.

Under this premise, we declared in *Aguas* that "the obvious conclusion is that a wife who is already separated *de facto* from her husband cannot be said to be 'dependent for support' upon the husband, absent any showing to the contrary. Conversely, if it is proved that the husband and wife were still living together at the time of his death, it would be safe to presume that she was dependent on the husband for support, unless it is shown that she is capable of providing for herself."[30] Hence, we held therein that the wife-claimant had the burden to prove that all the statutory requirements have been complied with, particularly her dependency on her husband at the time of his death. And, while said wife-claimant was the legitimate wife of the deceased, we ruled that she is not qualified as a primary beneficiary since she failed to present any proof to show that at the time of her husband's death, she was still dependent on him for support even if they were already living separately.

In this case, aside from Teresa's bare allegation that she was dependent upon her husband for support and her misplaced reliance on the presumption of dependency by reason of her valid and then subsisting marriage with Florante, Teresa has not presented sufficient evidence to discharge her burden of

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[29] Otherwise known as the GSIS ACT of 1997.

[30] *Supra* note 1 at 401.

proving that she was dependent upon her husband for support at the time of his death. She could have done this by submitting affidavits of reputable and disinterested persons who have knowledge that during her separation with Florante, she does not have a known trade, business, profession or lawful occupation from which she derives income sufficient for her support and such other evidence tending to prove her claim of dependency. While we note from the abovementioned SSS Memorandum that Teresa submitted affidavits executed by Napoleon Favila and Josefina Favila, same only pertained to the fact that she never remarried nor cohabited with another man. On the contrary, what is clear is that she and Florante had already been separated for about 17 years prior to the latter's death as Florante was in fact, living with his common law wife when he died. Suffice it to say that "[w]hoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence."[31] Hence, for Teresa's failure to show that despite their separation she was dependent upon Florante for support at the time of his death, Teresa cannot qualify as a primary beneficiary. Hence, she is not entitled to the death benefits accruing on account of Florante's death.

As a final note, we do not agree with the CA's pronouncement that the investigations conducted by SSS violate a person's right to privacy. SSS, as the primary institution in charge of extending social security protection to workers and their beneficiaries is mandated by Section 4(b)(7) of RA 8282[32] to require reports, compilations and analyses of statistical and economic data and to make an investigation as may be needed for its proper administration and development. Precisely, the investigations conducted by SSS are appropriate in order to ensure that the benefits provided under the SS Law are received by the rightful beneficiaries. It is not hard to see that such measure is necessary for the system's proper administration, otherwise, it will be

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[31] *Signey v. Social Security System, supra* note 24 at 639.

[32] An Act Further Strengthening the Social Security System thereby Amending for this Purpose, Republic Act No. 1161, as amended, otherwise known as the Social Security Law.

swamped with bogus claims that will pointlessly deplete its funds. Such scenario will certainly frustrate the purpose of the law which is to provide covered employees and their families protection against the hazards of disability, sickness, old age and death, with a view to promoting their well-being in the spirit of social justice. Moreover and as correctly pointed out by SSC, such investigations are likewise necessary to carry out the mandate of Section 15 of the SS Law which provides in part, *viz:*

> Sec. 15. *Non-transferability of Benefits*. – The SSS shall pay the benefits provided for in this Act ***to such [x x x] persons as may be entitled thereto in accordance with the provisions of this Act*** x x x. (Emphasis ours.)

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals dated May 24, 2005 and October 17, 2005 in CA-G.R. SP No. 82763 are hereby *REVERSED and SET ASIDE*. Respondent Teresa G. Favila is declared to be not a dependent spouse within the contemplation of Republic Act No. 1161 and is therefore not entitled to death benefits accruing from the death of Florante Favila.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178454. March 28, 2011]

FILIPINA SAMSON, *petitioner, vs.* **JULIA A. RESTRIVERA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; JURISDICTION; INCLUDES COMPLAINT AGAINST GOVERNMENT EMPLOYEE FOR ACT INVOLVING PRIVATE DEAL.— [W]e agree with the CA that the Ombudsman has jurisdiction over respondent's complaint against petitioner although the act complained of involves a private deal between them. Section 13(1), Article XI of the 1987 Constitution states that the Ombudsman can investigate on its own or on complaint by any person ***any*** act or omission of any public official or employee when such act or omission appears to be illegal, unjust, or improper. Under Section 16 of R.A. No. 6770, otherwise known as the Ombudsman Act of 1989, the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and nonfeasance committed by any public officer or employee during his/her tenure. Section 19 of R.A. No. 6770 also states that the Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which are unfair or irregular. Thus, even if the complaint concerns an act of the public official or employee which is not service-connected, the case is within the jurisdiction of the Ombudsman. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty. Since the law does not distinguish, neither should we.

2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES MAY CONTINUE DESPITE DISMISSAL OF RELATIVE CRIMINAL CHARGES.— [I]t is wrong for petitioner to say that since the *estafa* case against her was dismissed, she cannot be found administratively liable. It is settled that administrative cases may proceed independently of criminal proceedings, and may continue despite the dismissal of the criminal charges.

3. ID.; ID.; RA 6713 ON ETHICAL STANDARDS FOR PUBLIC SERVANTS; SEC. 4(A)(B) ON PROFESSIONALISM; ELUCIDATED.— Section 4(A)(b) on *professionalism*. "Professionalism" is defined as the conduct, aims, or qualities that characterize or mark a profession. A professional refers to a person who engages in an activity with great competence. Indeed, to call a person a professional is to describe him as competent, efficient, experienced, proficient or polished. In the context of Section 4 (A)(b) of R.A. No. 6713, the observance of professionalism also means upholding the integrity of public office by endeavoring "to discourage wrong perception of their roles as dispensers or peddlers of undue patronage." Thus, a public official or employee should avoid any *appearance of impropriety* affecting the integrity of government services. However, it should be noted that Section 4(A) enumerates the standards of personal conduct for public officers with reference to "execution of official duties." x x x [B]oth the Ombudsman and CA interpreted Section 4(A) of R.A. No. 6713 as broad enough to apply even to private transactions that have no connection to the duties of one's office. We hold, however, that petitioner may not be penalized for violation of Section 4 (A)(b) of R.A. No. 6713. The reason though does not lie in the fact that the act complained of is not at all related to petitioner's discharge of her duties as department head of the Population Commission. x x x [T]he CSC issued the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees (hereafter, Implementing Rules). Rule V of the Implementing Rules provides for an Incentive and Rewards System for public officials and employees who have demonstrated exemplary service and conduct on the basis of their observance of the norms of conduct laid down in Section 4 of R.A. No. 6713, to wit: x x x On the other hand, Rule X of the Implementing Rules enumerates grounds for administrative disciplinary action, as follows: x x x In *Domingo v. Office of the Ombudsman*, this Court had the occasion to rule that failure to abide by the norms of conduct under Section 4(A)(b) of R.A. No. 6713, in relation to its implementing rules, is not a ground for disciplinary action. x x x Consequently, the Court dismissed the charge of violation of Section 4(A)(b) of R.A. No. 6713 in that case. We find no compelling reason to depart from our pronouncement in *Domingo*. x x x [W]e do no less and no more than apply the law and its implementing rules issued by the

CSC under the authority given to it by Congress. Needless to stress, said rules partake the nature of a statute and are binding as if written in the law itself. They have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.

4. ID.; ID.; MISCONDUCT; GRAVE AND SIMPLE MISCONDUCT, DISTINGUISHED.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple. Conversely, one cannot be found guilty of misconduct in the absence of substantial evidence.

5. ID.; ID.; CONDUCT UNBECOMING OF A PUBLIC OFFICER; PRESENT FOR RENEGING ON THE PROMISE TO RETURN AMOUNT ACCEPTED RELATIVE TO AN ABORTED TRANSACTION.— For reneging on her promise to return the amount [accepted relative to the aborted transaction], petitioner is guilty of conduct unbecoming a public officer. x x x Recently, in *Assistant Special Prosecutor III Rohermia J. Jamsani-Rodriguez v. Justices Gregory S. Ong, et al.*, we said that unbecoming conduct means improper performance and applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method. This Court has too often declared that any act that falls short of the exacting standards for public office shall not be countenanced. The Constitution categorically declares as follows: SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. Petitioner should have complied with her promise to return the amount to respondent after failing to accomplish the task she had willingly accepted. However, she waited until respondent sued her for *estafa*, thus reinforcing the latter's suspicion that petitioner misappropriated her money. Although the element of deceit was not proven in the criminal case respondent filed against the petitioner, it is

clear that by her actuations, petitioner violated basic social and ethical norms in her private dealings. Even if unrelated to her duties as a public officer, petitioner's transgression could erode the public's trust in government employees, moreso because she holds a high position in the service.

6. ID.; ID.; ID.; ID.; PENALTY.— Under the circumstances of this case, a fine of ₱15,000 in lieu of the three months suspension is proper. In imposing said fine, we have considered as a mitigating circumstance petitioner's 37 years of public service and the fact that this is the first charge against her. Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that mitigating circumstances such as length of service shall be considered. And since petitioner has earlier agreed to return the amount of ₱50,000 including interest, we find it proper to order her to comply with said agreement. Eventually, the parties may even find time to rekindle their friendship.

APPEARANCES OF COUNSEL

Erlinda S. Abalos for petitioner.
Alferos & Po Law Office for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Filipina Samson appeals the Decision[1] dated October 31, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 83422 and its Resolution[2] dated June 8, 2007, denying her motion for reconsideration. The CA affirmed the Ombudsman in finding petitioner guilty of violating Section 4(b)[3] of Republic

[1] *Rollo*, pp. 126-142. Penned by Presiding Justice Ruben T. Reyes (now a retired Member of this Court) with the concurrence of Associate Justices Juan Q. Enriquez and Vicente S.E. Veloso.

[2] *Id.* at 145-146.

[3] SEC. 4. *Norms of Conduct of Public Officials and Employees*. - (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

Act (R.A.) No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

The facts are as follows:

Petitioner is a government employee, being a department head of the Population Commission with office at the Provincial Capitol, Trece Martirez City, Cavite.

Sometime in March 2001, petitioner agreed to help her friend, respondent Julia A. Restrivera, to have the latter's land located in Carmona, Cavite, registered under the Torrens System. Petitioner said that the expenses would reach ₱150,000 and accepted ₱50,000 from respondent to cover the initial expenses for the titling of respondent's land. However, petitioner failed to accomplish her task because it was found out that the land is government property. When petitioner failed to return the ₱50,000, respondent sued her for *estafa*. Respondent also filed an administrative complaint for grave misconduct or conduct unbecoming a public officer against petitioner before the Office of the Ombudsman.

The Ombudsman found petitioner guilty of violating Section 4(b) of R.A. No. 6713 and suspended her from office for six months without pay. The Ombudsman ruled that petitioner failed to abide by the standard set in Section 4(b) of R.A. No. 6713 and deprived the government of the benefit of committed service when she embarked on her private interest to help respondent secure a certificate of title over the latter's land.[4]

Upon motion for reconsideration, the Ombudsman, in an Order[5] dated March 15, 2004, reduced the penalty to three

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x x x x x x x x x

(b) *Professionalism*. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

[4] *Rollo*, pp. 37-38.

[5] *Id.* at 40-45.

months suspension without pay. According to the Ombudsman, petitioner's acceptance of respondent's payment created a perception that petitioner is a fixer. Her act fell short of the standard of personal conduct required by Section 4(b) of R.A. No. 6713 that public officials shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. The Ombudsman held:

> x x x [petitioner] admitted x x x that she indeed received the amount of ₱50,000.00 from the [respondent] and even contracted Engr. Liberato Patromo, alleged Licensed Geodetic Engineer to do the surveys.
>
> While it may be true that [petitioner] did not actually deal with the other government agencies for the processing of the titles of the subject property, we believe, however, that her mere act in accepting the money from the [respondent] with the assurance that she would work for the issuance of the title is already enough to create a perception that she is a fixer. Section 4(b) of [R.A.] No. 6713 mandates that public officials and employees shall ***endeavor to discourage wrong perception*** of their roles as dispenser or peddler of undue patronage.
>
> x x x x x x x x x
>
> x x x [petitioner's] act to x x x restore the amount of [₱50,000] was to avoid possible sanctions.
>
> x x x [d]uring the conciliation proceedings held on 19 October 2002 at the *barangay* level, it was agreed upon by both parties that [petitioner] be given until 28 February 2003 within which to pay the amount of ₱50,000.00 including interest. If it was true that [petitioner] had available money to pay and had been persistent in returning the amount of [₱50,000.00] to the [respondent], she would have easily given the same right at that moment (on 19 October 2002) in the presence of the *Barangay* Officials.[6] x x x. (Stress in the original.)

The CA on appeal affirmed the Ombudsman's Order dated March 19, 2004. The CA ruled that contrary to petitioner's contentions, the Ombudsman has jurisdiction even if the act complained of is a private matter. The CA also ruled that

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[6] *Id.* at 42-43.

petitioner violated the norms of conduct required of her as a public officer when she demanded and received the amount of ₱50,000 on the representation that she can secure a title to respondent's property and for failing to return the amount. The CA stressed that Section 4(b) of R.A. No. 6713 requires petitioner to perform and discharge her duties with the highest degree of excellence, professionalism, intelligence and skill, and to endeavor to discourage wrong perceptions of her role as a dispenser and peddler of undue patronage.[7]

Hence, this petition which raises the following issues:

1. Does the Ombudsman have jurisdiction over a case involving a private dealing by a government employee or where the act complained of is not related to the performance of official duty?
2. Did the CA commit grave abuse of discretion in finding petitioner administratively liable despite the dismissal of the *estafa* case?
3. Did the CA commit grave abuse of discretion in not imposing a lower penalty in view of mitigating circumstances?[8]

Petitioner insists that where the act complained of is not related to the performance of official duty, the Ombudsman has no jurisdiction. Petitioner also imputes grave abuse of discretion on the part of the CA for holding her administratively liable. She points out that the *estafa* case was dismissed upon a finding that she was not guilty of fraud or deceit, hence misconduct cannot be attributed to her. And even assuming that she is guilty of misconduct, she is entitled to the benefit of mitigating circumstances such as the fact that this is the first charge against her in her long years of public service.[9]

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[7] *Id.* at 141.

[8] *Id.* at 12.

[9] *Id.* at 13-16.

Respondent counters that the issues raised in the instant petition are the same issues that the CA correctly resolved.[10] She also alleges that petitioner failed to observe the mandate that public office is a public trust when she meddled in an affair that belongs to another agency and received an amount for undelivered work.[11]

We affirm the CA and Ombudsman that petitioner is administratively liable. We hasten to add, however, that petitioner is guilty of conduct unbecoming a public officer.

On the first issue, we agree with the CA that the Ombudsman has jurisdiction over respondent's complaint against petitioner although the act complained of involves a private deal between them.[12] Section 13(1),[13] Article XI of the 1987 Constitution states that the Ombudsman can investigate on its own or on complaint by any person ***any*** act or omission of any public official or employee when such act or omission appears to be illegal, unjust, or improper. Under Section 16[14] of R.A. No. 6770, otherwise known as the Ombudsman Act of 1989, the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and nonfeasance committed by any public officer or employee during his/her tenure. Section 19[15] of R.A. No. 6770

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[10] *Id.* at 73.

[11] *Id.* at 74.

[12] See *Santos v. Rasalan*, G.R. No. 155749, February 8, 2007, 515 SCRA 97, 102.

[13] Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.

x x x x x x x x x

[14] SEC. 16. *Applicability*. - The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and nonfeasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office.

[15] SEC. 19. *Administrative Complaints*. - The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

also states that the Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which are unfair or irregular. Thus, even if the complaint concerns an act of the public official or employee which is not service-connected, the case is within the jurisdiction of the Ombudsman. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty. Since the law does not distinguish, neither should we.[16]

On the second issue, it is wrong for petitioner to say that since the *estafa* case against her was dismissed, she cannot be found administratively liable. It is settled that administrative cases may proceed independently of criminal proceedings, and may continue despite the dismissal of the criminal charges.[17]

For proper consideration instead is petitioner's liability under Sec. 4(A)(b) of R.A. No. 6713.

We quote the full text of Section 4 of R.A. No. 6713:

SEC. 4. *Norms of Conduct of Public Officials and Employees.* - (A) Every public official and employee shall observe the following as **standards of personal conduct in the discharge and execution of official duties**:

(a) *Commitment to public interest.* - Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

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x x x x x x x x x

(2) Are x x x unfair x x x;

x x x x x x x x x

(6) Are otherwise irregular x x x.

[16] See *Santos v. Rasalan, supra* note 12 at 102, citing *Vasquez v. Hobilla-Alinio*, G.R. Nos. 118813-14, April 8, 1997, 271 SCRA 67, 74.

[17] *Bejarasco, Jr. v. Buenconsejo*, A.M. No. MTJ-02-1417, May 27, 2004, 429 SCRA 212, 221.

(b) ***Professionalism.*** - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. **They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.**

(c) *Justness and sincerity*. - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

(d) *Political neutrality*. - Public officials and employees shall provide service to everyone without unfair discrimination and regardless of party affiliation or preference.

(e) *Responsiveness to the public*. - Public officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, public officials and employees shall provide information on their policies and procedures in clear and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socioeconomic conditions prevailing in the country, especially in the depressed rural and urban areas.

(f) *Nationalism and patriotism*. - Public officials and employees shall at all times be loyal to the Republic and to the Filipino people, promote the use of locally-produced goods, resources and technology and encourage appreciation and pride of country and people. They shall endeavor to maintain and defend Philippine sovereignty against foreign intrusion.

(g) *Commitment to democracy*. - Public officials and employees shall commit themselves to the democratic way of life and values,

maintain the principle of public accountability, and manifest by deed the supremacy of civilian authority over the military. They shall at all times uphold the Constitution and put loyalty to country above loyalty to persons or party.

(h) *Simple living*. - Public officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

(B) The Civil Service Commission shall adopt positive measures to promote (1) observance of these standards including the dissemination of information programs and workshops authorizing merit increases beyond regular progression steps, to a limited number of employees recognized by their office colleagues to be outstanding in their observance of ethical standards; and (2) continuing research and experimentation on measures which provide positive motivation to public officials and employees in raising the general level of observance of these standards.

Both the Ombudsman and CA found the petitioner administratively liable for violating Section 4(A)(b) on *professionalism.* "Professionalism" is defined as the conduct, aims, or qualities that characterize or mark a profession. A professional refers to a person who engages in an activity with great competence. Indeed, to call a person a professional is to describe him as competent, efficient, experienced, proficient or polished.[18] In the context of Section 4 (A)(b) of R.A. No. 6713, the observance of professionalism also means upholding the integrity of public office by endeavoring "to discourage wrong perception of their roles as dispensers or peddlers of undue patronage." Thus, a public official or employee should avoid any *appearance of impropriety* affecting the integrity of government services. However, it should be noted that Section 4(A) enumerates the standards of personal conduct for public officers with reference to "execution of official duties."

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[18] *Reyes v. Rural Bank of San Miguel (Bulacan), Inc.*, G.R. No. 154499, February 27, 2004, 424 SCRA 135, 144, citing *Webster's Third New International Dictionary.*

In the case at bar, the Ombudsman concluded that petitioner failed to carry out the standard of professionalism by devoting herself on her personal interest to the detriment of her solemn public duty. The Ombudsman said that petitioner's act deprived the government of her committed service because the generation of a certificate of title was not within her line of public service. In denying petitioner's motion for reconsideration, the Ombudsman said that it would have been sufficient if petitioner just referred the respondent to the persons/officials incharge of the processing of the documents for the issuance of a certificate of title. While it may be true that she did not actually deal with the other government agencies for the processing of the titles of the subject property, petitioner's act of accepting the money from respondent with the assurance that she would work for the issuance of the title is already enough to create a perception that she is a fixer.

On its part, the CA rejected petitioner's argument that an isolated act is insufficient to create those "wrong perceptions" or the "impression of influence peddling." It held that the law enjoins public officers, at all times to respect the rights of others and refrain from doing acts contrary to law, good customs, public order, public policy, public safety and public interest. Thus, it is not the plurality of the acts that is being punished but the commission of the act itself.

Evidently, both the Ombudsman and CA interpreted Section 4(A) of R.A. No. 6713 as broad enough to apply even to private transactions that have no connection to the duties of one's office. We hold, however, that petitioner may not be penalized for violation of Section 4 (A)(b) of R.A. No. 6713. The reason though does not lie in the fact that the act complained of is not at all related to petitioner's discharge of her duties as department head of the Population Commission.

In addition to its directive under Section 4(B), Congress authorized[19] the Civil Service Commission (CSC) to promulgate

[19] SEC. 12. *Promulgation of Rules and Regulations, Administration and Enforcement of this Act*. - The Civil Service Commission shall have the primary responsibility for the administration and enforcement of this Act. x x x.

the rules and regulations necessary to implement R.A. No. 6713. Accordingly, the CSC issued the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees (hereafter, Implementing Rules). Rule V of the Implementing Rules provides for an Incentive and Rewards System for public officials and employees who have demonstrated exemplary service and conduct on the basis of their observance of the norms of conduct laid down in Section 4 of R.A. No. 6713, to wit:

RULE V. INCENTIVES AND REWARDS SYSTEM

SECTION 1. Incentives and rewards shall be granted officials and employees who have demonstrated exemplary service and conduct on the basis of their observance of the norms of conduct laid down in Section 4 of the Code, namely:

(a) *Commitment to public interest*. - x x x

(b) *Professionalism*. - x x x

(c) *Justness and sincerity*. - x x x

(d) *Political neutrality*. - x x x

(e) *Responsiveness to the public*. - x x x

(f) *Nationalism and patriotism*. - x x x

(g) *Commitment to democracy*. - x x x

(h) *Simple living*. - x x x

On the other hand, Rule X of the Implementing Rules enumerates grounds for administrative disciplinary action, as follows:

RULE X. GROUNDS FOR ADMINISTRATIVE DISCIPLINARY ACTION

SECTION 1. In addition to the grounds for administrative disciplinary action prescribed under existing laws, the acts and omissions of any official or employee, whether or not he holds office

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The Civil Service Commission is hereby authorized to promulgate rules and regulations necessary to carry out the provisions of this Act, x x x.

or employment in a casual, temporary, hold-over, permanent or regular capacity, declared unlawful or prohibited by the Code, shall constitute grounds for administrative disciplinary action, and without prejudice to criminal and civil liabilities provided herein, such as:

(a) Directly or indirectly having financial and material interest in any transaction requiring the approval of his office. x x x.

(b) Owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee, or nominee in any private enterprise regulated, supervised or licensed by his office, unless expressly allowed by law;

(c) Engaging in the private practice of his profession unless authorized by the Constitution, law or regulation, provided that such practice will not conflict or tend to conflict with his official functions;

(d) Recommending any person to any position in a private enterprise which has a regular or pending official transaction with his office, unless such recommendation or referral is mandated by (1) law, or (2) international agreements, commitment and obligation, or as part of the functions of his office;

x x x x x x x x x

(e) Disclosing or misusing confidential or classified information officially known to him by reason of his office and not made available to the public, to further his private interests or give undue advantage to anyone, or to prejudice the public interest;

(f) Soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of, his office. x x x.

x x x x x x x x x

(g) Obtaining or using any statement filed under the Code for any purpose contrary to morals or public policy or any commercial purpose other than by news and communications media for dissemination to the general public;

(h) Unfair discrimination in rendering public service due to party affiliation or preference;

(i) Disloyalty to the Republic of the Philippines and to the Filipino people;

(j) Failure to act promptly on letters and request within fifteen (15) days from receipt, except as otherwise provided in these Rules;

(k) Failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in these Rules;

(l) Failure to attend to anyone who wants to avail himself of the services of the office, or to act promptly and expeditiously on public personal transactions;

(m) Failure to file sworn statements of assets, liabilities and net worth, and disclosure of business interests and financial connections; and

(n) Failure to resign from his position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to divest himself of his shareholdings or interests in private business enterprise within sixty (60) days from such assumption of public office when conflict of interest arises: *Provided*, however, that for those who are already in the service and a conflict of interest arises, the official or employee must either resign or divest himself of said interests within the periods herein-above provided, reckoned from the date when the conflict of interest had arisen.

In *Domingo v. Office of the Ombudsman*,[20] this Court had the occasion to rule that failure to abide by the norms of conduct under Section 4(A)(b) of R.A. No. 6713, in relation to its implementing rules, is not a ground for disciplinary action, to wit:

The charge of violation of Section 4(b) of R.A. No. 6713 deserves further comment. The provision commands that "public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill." Said provision merely enunciates "professionalism as an ideal norm of conduct to be observed by public servants, in addition to commitment to public interest, justness and sincerity, political

[20] G.R. No. 176127, January 30, 2009, 577 SCRA 476, 484.

neutrality, responsiveness to the public, nationalism and patriotism, commitment to democracy and simple living. Following this perspective, Rule V of the Implementing Rules of R.A. No. 6713 adopted by the Civil Service Commission mandates the grant of incentives and rewards to officials and employees who demonstrate exemplary service and conduct based on their observance of the norms of conduct laid down in Section 4. In other words, under the mandated incentives and rewards system, officials and employees who comply with the high standard set by law would be rewarded. Those who fail to do so cannot expect the same favorable treatment. **However, the Implementing Rules does not provide that they will have to be sanctioned for failure to observe these norms of conduct. Indeed, Rule X of the Implementing Rules affirms as grounds for administrative disciplinary action only acts "declared unlawful or prohibited by the Code." Rule X specifically mentions at least twenty three (23) acts or omissions as grounds for administrative disciplinary action. Failure to abide by the norms of conduct under Section 4(b) of R.A. No. 6713 is not one of them.** (Emphasis supplied.)

Consequently, the Court dismissed the charge of violation of Section 4(A)(b) of R.A. No. 6713 in that case.

We find no compelling reason to depart from our pronouncement in *Domingo*. Thus, we reverse the CA and Ombudsman that petitioner is administratively liable under Section 4(A)(b) of R.A. No. 6713. In so ruling, we do no less and no more than apply the law and its implementing rules issued by the CSC under the authority given to it by Congress. Needless to stress, said rules partake the nature of a statute and are binding as if written in the law itself. They have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.[21]

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[21] See *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 288-289, citing *Eslao v. Commission on Audit*, G.R. No. 108310, September 1, 1994, 236 SCRA 161, 175, *Sierra Madre Trust v. Sec. of Agriculture and Natural Resources*, Nos. L-32370 & 32767, April 20, 1983, 121 SCRA 384 and *People v. Maceren*, No. L-32166, October 18, 1977, 79 SCRA 450.

But is petitioner nonetheless guilty of grave misconduct, which is a ground for disciplinary action under R.A. No. 6713?

We also rule in the negative.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple.[22] Conversely, one cannot be found guilty of misconduct in the absence of substantial evidence. In one case, we affirmed a finding of grave misconduct because there was substantial evidence of voluntary disregard of established rules in the procurement of supplies as well as of manifest intent to disregard said rules.[23] We have also ruled that complicity in the transgression of a regulation of the Bureau of Internal Revenue constitutes simple misconduct only as there was failure to establish flagrancy in respondent's act for her to be held liable of gross misconduct.[24] On the other hand, we have likewise dismissed a complaint for knowingly rendering an unjust order, gross ignorance of the law, and grave misconduct, since the complainant did not even indicate the particular acts of the judge which were allegedly violative of the Code of Judicial Conduct.[25]

In this case, respondent failed to prove (1) petitioner's violation of an established and definite rule of action or unlawful behavior or gross negligence, and (2) any of the aggravating elements of corruption, willful intent to violate a law or to disregard established

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[22] See *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

[23] *Roque v. Court of Appeals*, G.R. No. 179245, July 23, 2008, 559 SCRA 660, 675.

[24] *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9, 17.

[25] *Diomampo v. Alpajora*, A.M. No. RTJ-04-1880, October 19, 2004, 440 SCRA 534, 539-540.

rules on the part of petitioner. In fact, respondent could merely point to petitioner's alleged failure to observe the mandate that public office is a public trust when petitioner allegedly meddled in an affair that belongs to another agency and received an amount for undelivered work.

True, public officers and employees must be guided by the principle enshrined in the Constitution that public office is a public trust. However, respondent's allegation that petitioner meddled in an affair that belongs to another agency is a serious but unproven accusation. Respondent did not even say what acts of interference were done by petitioner. Neither did respondent say in which government agency petitioner committed interference. And causing the survey of respondent's land can hardly be considered as meddling in the affairs of another government agency by petitioner who is connected with the Population Commission. It does not show that petitioner made an illegal deal or any deal with any government agency. Even the Ombudsman has recognized this fact. The survey shows only that petitioner contracted a surveyor. Respondent said nothing on the propriety or legality of what petitioner did. The survey shows that petitioner also started to work on her task under their agreement. Thus, respondent's allegation that petitioner received an amount for undelivered work is not entirely correct. Rather, petitioner failed to fully accomplish her task in view of the legal obstacle that the land is government property.

However, the foregoing does not mean that petitioner is absolved of any administrative liability.

But first, we need to modify the CA finding that petitioner demanded the amount of ₱50,000 from respondent because respondent did not even say that petitioner demanded money from her.[26] We find in the allegations and counter-allegations that respondent came to petitioner's house in Biñan, Laguna, and asked petitioner if she can help respondent secure a title to her land which she intends to sell. Petitioner agreed to help. When respondent asked about the cost, petitioner said ₱150,000

[26] *Rollo*, pp. 20-21, 73-76.

and accepted ₱50,000 from respondent to cover the initial expenses.[27]

We agree with the common finding of the Ombudsman and the CA that, in the aftermath of the aborted transaction, petitioner still failed to return the amount she accepted. As aptly stated by the Ombudsman, if petitioner was persistent in returning the amount of ₱50,000 until the preliminary investigation of the *estafa* case on September 18, 2003,[28] there would have been no need for the parties' agreement that petitioner be given until February 28, 2003 to pay said amount including interest. Indeed, petitioner's belated attempt to return the amount was intended to avoid possible sanctions and impelled solely by the filing of the *estafa* case against her.

For reneging on her promise to return aforesaid amount, petitioner is guilty of conduct unbecoming a public officer. In *Joson v. Macapagal*, we have also ruled that the respondents therein were guilty of conduct unbecoming of government employees when they reneged on their promise to have pertinent documents notarized and submitted to the Government Service Insurance System after the complainant's rights over the subject property were transferred to the sister of one of the respondents.[29] Recently, in *Assistant Special Prosecutor III Rohermia J. Jamsani-Rodriguez v. Justices Gregory S. Ong, et al.*, we said that unbecoming conduct means improper performance and applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method.[30]

This Court has too often declared that any act that falls short of the exacting standards for public office shall not be

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

[28] *Id.* at 23.

[29] A.M. No. P-02-1591, June 21, 2002, 383 SCRA 403, 406-407.

[30] A.M. No. 08-19-SB-J, August 24, 2010, p. 22.

countenanced.[31] The Constitution categorically declares as follows:

> SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[32]

Petitioner should have complied with her promise to return the amount to respondent after failing to accomplish the task she had willingly accepted. However, she waited until respondent sued her for *estafa*, thus reinforcing the latter's suspicion that petitioner misappropriated her money. Although the element of deceit was not proven in the criminal case respondent filed against the petitioner, it is clear that by her actuations, petitioner violated basic social and ethical norms in her private dealings. Even if unrelated to her duties as a public officer, petitioner's transgression could erode the public's trust in government employees, moreso because she holds a high position in the service.

As to the penalty, we reprimanded the respondents in *Joson* and imposed a fine in *Jamsani-Rodriguez*. Under the circumstances of this case, a fine of ₱15,000 in lieu of the three months suspension is proper. In imposing said fine, we have considered as a mitigating circumstance petitioner's 37 years of public service and the fact that this is the first charge against her.[33] Section 53[34] of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that mitigating circumstances such as length of service shall be considered.

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[31] *Pablejan v. Calleja*, A.M. No. P-06-2102, January 24, 2006, 479 SCRA 562, 569.

[32] Sec. 1 of Article XI of the 1987 Constitution.

[33] *Rollo*, p. 44.

[34] Sec. 53. x x x *Mitigating x x x Circumstances*.

x x x x x x x x x

j. Length of service in the government

x x x x x x x x x

And since petitioner has earlier agreed to return the amount of ₱50,000 including interest, we find it proper to order her to comply with said agreement. Eventually, the parties may even find time to rekindle their friendship.

WHEREFORE, we *SET ASIDE* the Decision dated October 31, 2006 of the Court of Appeals and its Resolution dated June 8, 2007 in CA-G.R. SP No. 83422, as well as the Decision dated January 6, 2004 and Order dated March 15, 2004 of the Ombudsman in OMB-L-A-03-0552-F, and *ENTER* a new judgment as follows:

We find petitioner *GUILTY* of conduct unbecoming a public officer and impose upon her a *FINE* of ₱15,000.00 to be paid at the Office of the Ombudsman within five (5) days from finality of this Decision.

We also *ORDER* petitioner to return to respondent the amount of ₱50,000.00 with interest thereon at 12% per annum from March 2001 until the said amount shall have been fully paid.

With costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 185556. March 28, 2011]

SUPREME STEEL CORPORATION, *petitioner, vs.* **NAGKAKAISANG MANGGAGAWA NG SUPREME INDEPENDENT UNION (NMS-IND-APL),** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA) AS THE LAW BETWEEN THE PARTIES, ELUCIDATED.— It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and compliance therewith is mandated by the express policy of the law. If the terms of a CBA are clear and there is no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall prevail. Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic construction upon it. Any doubt in the interpretation of any law or provision affecting labor should be resolved in favor of labor. x x x Stipulations in a contract must be read together, not in isolation from one another. x x x Absurd and illogical interpretations should be avoided. A CBA, like any other contract, must be interpreted according to the intention of the parties.

2. ID.; ID.; ID.; COMPANY PRACTICE; MUST BE SUFFICIENTLY ESTABLISHED.— Petitioner claims that it has been the company practice to offset the anniversary increase with the CBA increase. It however failed to prove such material fact. Company practice, just like any other fact, habits, customs, usage or patterns of conduct must be proven. The offering party must allege and prove specific, repetitive conduct that might constitute evidence of habit, or company practice. Evidently, the pay slips of the four employees do not serve as sufficient proof. x x x Similarly [for the respondent], no proof was presented showing that the implementation of wage orders across the board has ripened into a company practice. x x x The isolated act of implementing a wage order across the board

can hardly be considered a company practice, more so when such implementation was erroneously made.

3. ID.; ID.; ID.; EMPLOYER; HAS THE DUTY TO MAINTAIN FIRST-AID IN ITS PREMISES AND TO TRANSPORT EMPLOYEE TO NEAREST HOSPITAL IN CASE OF EMERGENCY.— Petitioner should reimburse [its employee] Solitario for the first aid medicines; after all, it is the duty of the employer to maintain first-aid medicines in its premises. Similarly, Guevara and Canizares should also be reimbursed for the transportation cost incurred in going to the hospital. The Omnibus Rules Implementing the Labor Code provides that, where the employer does not have an emergency hospital in its premises, the employer is obliged to transport an employee to the nearest hospital or clinic in case of emergency.

4. ID.; ID.; ID.; MANAGEMENT PREROGATIVE; SUBJECT TO LIMITATIONS LIKE THE CBA.— Indeed, jurisprudence recognizes the right to exercise management prerogative. Labor laws also discourage interference with an employer's judgment in the conduct of its business. For this reason, the Court often declines to interfere in legitimate business decisions of employers. The law must protect not only the welfare of employees, but also the right of employers. However, the exercise of management prerogative is not unlimited. Managerial prerogatives are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice. The CBA is the norm of conduct between the parties and, as previously stated, compliance therewith is mandated by the express policy of the law. x x x [Employer] cannot exempt itself from compliance by invoking management prerogative. Management prerogative must take a backseat when faced with a CBA provision.

5. ID.; ID.; REGULAR EMPLOYMENT; PRIMARY STANDARD IS THE REASONABLE CONNECTION BETWEEN THE PARTICULAR ACTIVITY PERFORMED BY EMPLOYEE IN RELATION TO THE BUSINESS OF THE EMPLOYER.— [T]he Court has already held that, where from the circumstances it is apparent that the periods of employment have been imposed to preclude acquisition of security of tenure by the employee, they should be struck down or disregarded as contrary to public policy and morals. The primary standard to determine a regular employment is the reasonable connection between the particular

activity performed by the employee in relation to the business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business of the employer. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; DISEASE AS GROUND FOR TERMINATION; VALIDITY OF SUCH DISMISSAL MUST BE ESTABLISHED BY THE EMPLOYER.— It is already settled that the burden to prove the validity of the dismissal rests upon the employer. Dismissal based on Article 284 of the Labor Code is no different, thus: The law is unequivocal: the employer, before it can legally dismiss its employee on the ground of disease, must adduce a certification from a competent public authority that the disease of which its employee is suffering is of such nature or at such a stage that it cannot be cured within a period of six months even with proper treatment. x x x In *Triple Eight Integrated Services, Inc. v. NLRC,* the Court explains why the submission of the requisite medical certificate is for the employer's compliance, thus: The requirement for a medical certificate under Article 284 of the Labor Code cannot be dispensed with; otherwise, it would sanction the unilateral and arbitrary determination by the employer of the gravity or extent of the employee's illness and thus defeat the public policy on the protection of labor. x x x

7. ID.; ID.; DIMINUTION OF BENEFITS; ELEMENTS.— Diminution of benefits is the unilateral withdrawal by the employer of benefits already enjoyed by the employees. There is diminution of benefits when it is shown that: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.

APPEARANCES OF COUNSEL

Batino Law Offices for petitioner.

Sentro ng Alternatibong Lingap Panligal (SALIGAN) for respondent.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari* assails the Court of Appeals (CA) Decision[1] dated September 30, 2008, and Resolution dated December 4, 2008, which affirmed the finding of the National Labor Relations Commission (NLRC) that petitioner violated certain provisions of the Collective Bargaining Agreement (CBA).

Petitioner Supreme Steel Pipe Corporation is a domestic corporation engaged in the business of manufacturing steel pipes for domestic and foreign markets. Respondent Nagkakaisang Manggagawa ng Supreme Independent Union is the certified bargaining agent of petitioner's rank-and-file employees. The CBA[2] in question was executed by the parties to cover the period from June 1, 2003 to May 31, 2008.

The Case

On July 27, 2005, respondent filed a notice of strike with the National Conciliation and Mediation Board (NCMB) on the ground that petitioner violated certain provisions of the CBA. The parties failed to settle their dispute. Consequently, the Secretary of Labor certified the case to the NLRC for compulsory arbitration pursuant to Article 263(g) of the Labor Code.

Respondent alleged eleven CBA violations, delineated as follows:

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[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Noel G. Tijam and Arturo G. Tayag, concurring; *rollo,* pp. 35-61.

[2] *Rollo,* pp. 174-184.

A. Denial to four employees of the CBA- provided wage increase

Article XII, Section 1 of the CBA provides:

Section 1. The COMPANY shall grant a general wage increase, over and above to all employees, according to the following schedule:

A. Effective June 1, 2003 ₱14.00 per working day;
B. Effective June 1, 2004 ₱12.00 per working day; and
C. Effective June 1, 2005 ₱12.00 per working day.[3]

Respondent alleged that petitioner has repeatedly denied the annual CBA increases to at least four individuals: Juan Niño, Reynaldo Acosta, Rommel Talavera, and Eddie Dalagon. According to respondent, petitioner gives an anniversary increase to its employees upon reaching their first year of employment. The four employees received their respective anniversary increases and petitioner used such anniversary increase to justify the denial of their CBA increase for the year.[4]

Petitioner explained that it has been the company's long standing practice that upon reaching one year of service, a wage adjustment is granted, and, once wages are adjusted, the increase provided for in the CBA for that year is no longer implemented. Petitioner claimed that this practice was not objected to by respondent as evidenced by the employees' pay slips.[5]

Respondent countered that petitioner failed to prove that, as a matter of company practice, the anniversary increase took the place of the CBA increase. It contended that all employees should receive the CBA stipulated increase for the years 2003 to 2005.[6]

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[3] *Id.* at 180.

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

[5] *Id.* at 116.

[6] *Id.*

B. Contracting-out labor

Article II, Section 6 of the CBA provides:

Section 6. Prohibition of Contracting Out of Work of Members of Bargaining Unit. Thirty (30) days from the signing of this CBA, contractual employees in all departments, except Warehouse and Packing Section, shall be phased out. Those contractual employees who are presently in the workforce of the COMPANY shall no longer be allowed to work after the expiration of their contracts without prejudice to being hired as probationary employees of the COMPANY.[7]

Respondent claimed that, contrary to this provision, petitioner hired temporary workers for five months based on uniformly worded employment contracts, renewable for five months, and assigned them to almost all of the departments in the company. It pointed out that, under the CBA, temporary workers are allowed only in the Warehouse and Packing Section; consequently, employment of contractual employees outside this section, whether direct or agency-hired, was absolutely prohibited. Worse, petitioner never regularized them even if the position they occupied and the services they performed were necessary and desirable to its business. Upon the expiration of their contracts, these workers would be replaced with other workers with the same employment status. This scheme is a clear circumvention of the laws on regular employment.[8]

Respondent argued that the right to self-organization goes beyond the maintenance of union membership. It emphasized that the CBA maintains a union shop clause which gives the regular employees 30 days within which to join respondent as a condition for their continued employment. Respondent maintained that petitioner's persistent refusal to grant regular status to its employees, such as Dindo Buella, who is assigned in the Galvanizing Department, violates the employees' right to self-organization in two ways: (1) they are deprived of a representative for collective bargaining purposes; and (2)

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[7] *Id.* at 175.

[8] *Id.* at 118.

respondent is deprived the right to expand its membership. Respondent contended that a union's strength lies in its number, which becomes crucial especially during negotiations; after all, an employer will not bargain seriously with a union whose membership constitutes a minority of the total workforce of the company. According to respondent, out of the 500 employees of the company, only 147 are union members, and at least 60 employees would have been eligible for union membership had they been recognized as regular employees.[9]

For its part, petitioner admitted that it hired temporary workers. It purportedly did so to cope with the seasonal increase of the job orders from abroad. In order to comply with the job orders, petitioner hired the temporary workers to help the regular workers in the production of steel pipes. Petitioner maintained that these workers do not affect respondent's membership. Petitioner claimed that it agreed to terminate these temporary employees on the condition that the regular employees would have to perform the work that these employees were performing, but respondent refused. Respondent's refusal allegedly proved that petitioner was not contracting out the services being performed by union members. Finally, petitioner insisted that the hiring of temporary workers is a management prerogative.[10]

C. Failure to provide shuttle service

Petitioner has allegedly reneged on its obligation to provide shuttle service for its employees pursuant to Article XIV, Section 7 of the CBA, which provides:

Section 7. Shuttle Service. As per company practice, once the company vehicle used for the purpose has been reconditioned.[11]

Respondent claimed that the company vehicle which would be used as shuttle service for its employees has not been

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[9] *Id.* at 118-119.

[10] *Id.* at 117.

[11] *Id.* at 181.

reconditioned by petitioner since the signing of the CBA on February 26, 2004.[12] Petitioner explained that it is difficult to implement this provision and simply denied that it has reneged on its obligation.[13]

D. Refusal to answer for the medical expenses incurred by three employees

Respondent asserted that petitioner is liable for the expenses incurred by three employees who were injured while in the company premises. This liability allegedly stems from Article VIII, Section 4 of the CBA which provides:

> **Section 4.** The COMPANY agrees to provide first aid medicine and first aid service and consultation free of charge to all its employees.[14]

According to respondent, petitioner's definition of what constitutes first aid service is limited to the bare minimum of treating injured employees while still within the company premises and referring the injured employee to the Chinese General Hospital for treatment, but the travel expense in going to the hospital is charged to the employee. Thus, when Alberto Guevarra and Job Canizares, union members, were injured, they had to pay ₱90.00 each for transportation expenses in going to the hospital for treatment and going back to the company thereafter. In the case of Rodrigo Solitario, petitioner did not even shoulder the cost of the first aid medicine, amounting to ₱2,113.00, even if he was injured during the company sportsfest, but the amount was deducted, instead, from his salary. Respondent insisted that this violates the above cited provision of the CBA.[15]

Petitioner insisted that it provided medicine and first aid assistance to Rodrigo Solitario. It alleged that the latter cannot

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[12] *Id.* at 119.

[13] *Id.* at 120.

[14] *Id.* at 178.

[15] *Id.* at 120.

claim hospitalization benefits under Article VIII, Section 1[16] of the CBA because he was not confined in a hospital.[17]

E. Failure to comply with the time-off with pay provision

Article II, Section 8 of the CBA provides:

Section 8. Time-Off with Pay. The COMPANY shall grant to the UNION's duly authorized representative/s or to any employee who are on duty, if summoned by the UNION to testify, if his/her presence is necessary, a paid time-off for the handling of grievances, cases, investigations, labor-management conferences provided that if the venue of the case is outside Company premises involving [the] implementation and interpretation of the CBA, two (2) representatives of the UNION who will attend the said hearing shall be considered time-off with pay. If an employee on a night shift attends grievance on labor-related cases and could not report for work due to physical condition, he may avail of union leave without need of the two (2) days prior notice.[18]

Respondent contended that under the said provision, petitioner was obliged to grant a paid time-off to respondent's duly authorized representative or to any employee who was on duty, when summoned by respondent to testify or when the employee's presence was necessary in the grievance hearings, meetings, or investigations.[19]

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[16] Section 1, Article VIII of the CBA provides:

Section 1. The COMPANY agrees to extend financial assistance to regular employees/workers who are required to undergo hospitalization upon proper certification by the COMPANY Physician except in emergency cases which do not require physician's certification. The maximum assistance to be extended to any worker covered by the Agreement shall not exceed EIGHT THOUSAND PESOS (₱8,000.00) and shall be availed only after the Philhealth Benefits have been exhausted. It is understood that the EIGHT THOUSAND PESOS (₱8,000.00) assistance is to include fees of the specialist upon proper certification by the Company Physician.

[17] *Rollo,* p. 121.

[18] *Id.* at 175.

[19] *Id.* at 121-122.

Petitioner admitted that it did not honor the claim for wages of the union officers who attended the grievance meetings because these meetings were initiated by respondent itself. It argued that since the union officers were performing their functions as such, and not as employees of the company, the latter should not be liable. Petitioner further asserted that it is not liable to pay the wages of the union officers when the meetings are held beyond company time (3:00 p.m.). It claimed that time-off with pay is allowed only if the venue of the meeting is outside company premises and the meeting involves the implementation and interpretation of the CBA.[20]

In reply, respondent averred that the above quoted provision does not make a qualification that the meetings should be held during office hours (7:00 a.m. to 3:00 p.m.); hence, for as long as the presence of the employee is needed, time spent during the grievance meeting should be paid.[21]

F. Visitors' free access to company premises

Respondent charged petitioner with violation of Article II, Section 7 of the CBA which provides:

Section 7. Free Access to Company Premises. Local Union and Federation officers (subject to company's security measure) shall be allowed during working hours to enter the COMPANY premises for the following reasons:

a. To investigate grievances that have arisen;
b. To interview Union Officers, Stewards and members during reasonable hours; and
c. To attend to any meeting called by the Management or the UNION.[22]

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[20] *Id.* at 122.

[21] *Id.*

[22] *Id.* at 175.

G. Failure to comply with reporting time-off provision

Respondent maintained that a brownout is covered by Article XII, Section 3 of the CBA which states:

Section 3. Reporting Time-Off. The employees who have reported for work but are unable to continue working because of emergencies such as typhoons, flood, earthquake, transportation strike, where the COMPANY is affected and in case of fire which occurs in the block where the home of the employee is situated and not just across the street and serious illness of an immediate member of the family of the employee living with him/her and no one in the house can bring the sick family member to the hospital, shall be paid as follows:

a. At least half day if the work stoppage occurs within the first four (4) hours of work; and
b. A whole day if the work stoppage occurs after four (4) hours of work.[23]

Respondent averred that petitioner paid the employees' salaries for one hour only of the four-hour brownout that occurred on July 25, 2005 and refused to pay for the remaining three hours. In defense, petitioner simply insisted that brownouts are not included in the above list of emergencies.[24]

Respondent rejoined that, under the principle of *ejusdem generis*, brownouts or power outages come within the "emergencies" contemplated by the CBA provision. Although brownouts were not specifically identified as one of the emergencies listed in the said CBA provision, it cannot be denied that brownouts fall within the same kind or class of the enumerated emergencies. Respondent maintained that the intention of the provision was to compensate the employees for occurrences which are beyond their control, and power outage is one of such occurrences. It insisted that the list of emergencies is not an exhaustive list but merely gives an idea as to what constitutes an actual emergency that is beyond the control of the employee.[25]

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[23] *Id.* at 180.

[24] *Id.* at 124.

[25] *Id.*

H. Dismissal of Diosdado Madayag

Diosdado Madayag was employed as welder by petitioner. He was served a Notice of Termination dated March 14, 2005 which read:

> Please consider this as a Notice of Termination of employment effective March 14, 2005 under Art. 284 of the Labor Code and its Implementing Rules.
>
> This is based on the medical certificate submitted by your attending physician, Lucy Anne E. Mamba, M.D., Jose R. Reyes Memorial Medical Center dated March 7, 2005 with the following diagnosis:
>
> 'Diabetes Mellitus Type 2'
>
> Please be guided accordingly.[26]

Respondent contended that Madayag's dismissal from employment is illegal because petitioner failed to obtain a certification from a competent public authority that his disease is of such nature or at such stage that it cannot be cured within six months even after proper medical treatment. Petitioner also failed to prove that Madayag's continued employment was prejudicial to his health or that of his colleagues.[27]

Petitioner, on the other hand, alleged that Madayag was validly terminated under Art. 284[28] of the Labor Code and that his leg was amputated by reason of diabetes, which disease is not work-related. Petitioner claimed that it was willing to pay Madayag

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[26] *Id.* at 125.

[27] *Id.*

[28] LABOR CODE OF THE PHILIPPINES, Article 284 provides:

ART. 284. *DISEASE AS GROUND FOR TERMINATION*

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees; Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one whole year.

13 days for every year of service but respondent was asking for additional benefits.[29]

I. Denial of paternity leave benefit to two employees

Article XV, Section 2 of the CBA provides:

Section 2. Paternity Leave. As per law[,] [t]he Company shall, as much as possible, pay paternity leave within 2 weeks from submission of documents.[30]

Petitioner admitted that it denied this benefit to the claimants for failure to observe the requirement provided in the Implementing Rules and Regulations of Republic Act No. 8187 (Paternity Leave Act of 1995), that is, to notify the employer of the pregnancy of their wives and the expected date of delivery.[31]

Respondent argued that petitioner is relying on technicalities by insisting that the denial was due to the two employees' failure to notify it of the pregnancy of their respective spouses. It maintained that the notification requirement runs counter to the spirit of the law. Respondent averred that, on grounds of social justice, the oversight to notify petitioner should not be dealt with severely by denying the two claimants this benefit.[32]

J. Discrimination and harassment

According to respondent, petitioner was contemptuous over union officers for protecting the rights of union members. In an affidavit executed by Chito Guadaña, union secretary, he narrated that Alfred Navarro, Officer-in-Charge of the Packing Department, had been harsh in dealing with his fellow employees and would even challenge some workers to a fight. He averred that Navarro had an overbearing attitude during work and grievance meetings. In November 2004, Navarro removed Guadaña, a foreman, from

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[29] *Rollo,* p. 126.

[30] *Id.* at 181.

[31] *Id.*

[32] *Id.* at 128.

his position and installed another foreman from another section. The action was allegedly brought about by earlier grievances against Navarro's abuse. Petitioner confirmed his transfer to another section in violation of Article VI, Section 6 of the CBA,[33] which states in part:

> **Section 6. Transfer of Employment**. – No permanent positional transfer outside can be effected by the COMPANY without discussing the grounds before the Grievance Committee. All transfer shall be with advance notice of two (2) weeks. No transfer shall interfere with the employee's exercise of the right to self-organization.[34]

Respondent also alleged that Ariel Marigondon, union president, was also penalized for working for his fellow employees. One time, Marigondon inquired from management about matters concerning tax discrepancies because it appeared that non-taxable items were included as part of taxable income. Thereafter, Marigondon was transferred from one area of operation to another until he was allegedly forced to accept menial jobs of putting control tags on steel pipes, a kind of job which did not require his 16 years of expertise in examining steel pipes.[35]

Edgardo Masangcay, respondent's Second Vice President, executed an affidavit wherein he cited three instances when his salary was withheld by petitioner. The first incident happened on May 28, 2005 when petitioner refused to give his salary to his wife despite presentation of a proof of identification (ID) and letter of authorization. On June 18, 2005, petitioner also refused to release his salary to Pascual Lazaro despite submission of a letter of authority and his ID and, as a result, he was unable to buy medicine for his child who was suffering from asthma attack. The third instance happened on June 25, 2005 when his salary was short of ₱450.00; this amount was however released the following week.[36]

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[33] *Id.* at 130.

[34] *Id.* at 177.

[35] *Id.* at 129.

[36] *Id.*

Petitioner explained that the transfer of the employee from one department to another was the result of downsizing the Warehouse Department, which is a valid exercise of management prerogative. In Guadaña's case, Navarro denied that he was being harsh but claimed that he merely wanted to stress some points. Petitioner explained that Guadaña was transferred when the section where he was assigned was phased out due to the installation of new machines. Petitioner pointed out that the other workers assigned in said section were also transferred.[37]

For the petitioner, Emmanuel Mendiola, Production Superintendent, also executed an affidavit attesting that the allegation of Ariel Marigondon, that he was harassed and was a victim of discrimination for being respondent's President, had no basis. Marigondon pointed out that after the job order was completed, he was reassigned to his original shift and group.[38]

Petitioner also submitted the affidavits of Elizabeth Llaneta Aguilar, disbursement clerk and hiring staff, and Romeo T. Sy, Assistant Personnel Manager. Aguilar explained that she did not mean to harass Masangcay, but she merely wanted to make sure that he would receive his salary. Affiant Sy admitted that he refused to release Masangcay's salary to a woman who presented herself as his (Masangcay's) wife since nobody could attest to it. He claimed that such is not an act of harassment but a precautionary measure to protect Masangcay's interest.[39]

K. Non-implementation of COLA in Wage Order Nos. RBIII-10 and 11

Respondent posited that any form of wage increase granted through the CBA should not be treated as compliance with the wage increase given through the wage boards. Respondent claimed that, for a number of years, petitioner has complied with Article XII, Section 2 of the CBA which provides:

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[37] *Id.* at 129 and 131.

[38] *Id.* at 131.

[39] *Id.*

Section 2. All salary increase granted by the COMPANY shall not be credited to any future contractual or legislated wage increases. Both increases shall be implemented separate and distinct from the increases stated in this Agreement. It should be understood by both parties that contractual salary increase are separate and distinct from legislated wage increases, thus the increase brought by the latter shall be enjoyed also by all covered employees.[40]

Respondent maintained that for every wage order that was issued in Region 3, petitioner never hesitated to comply and grant a similar increase. Specifically, respondent cited petitioner's compliance with Wage Order No. RBIII-10 and grant of the mandated ₱15.00 cost of living allowance (COLA) to *all* its employees. Petitioner, however, stopped implementing it to non-minimum wage earners on July 24, 2005. It contended that this violates Article 100 of the Labor Code which prohibits the diminution of benefits already enjoyed by the workers and that such grant of benefits had already ripened into a company practice.[41]

Petitioner explained that the COLA provided under Wage Order No. RBIII-10 applies to minimum wage earners only and that, by mistake, it implemented the same across the board or to all its employees. After realizing its mistake, it stopped integrating the COLA to the basic pay of the workers who were earning above the minimum wage.[42]

The NLRC's Ruling

Out of the eleven issues raised by respondent, eight were decided in its favor; two (denial of paternity leave benefit and discrimination of union members) were decided in favor of petitioner; while the issue on visitor's free access to company premises was deemed settled during the mandatory conference. The dispositive portion of the NLRC Decision dated March 30, 2007 reads:

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[40] *Id.* at 180.

[41] *Id.* at 132.

[42] *Id.*

WHEREFORE, Supreme Steel Pipe Corporation (the Company) is hereby ordered to:

1) implement general wage increase to Juan Niño, Eddie Dalagon and Rommel Talavera pursuant to the CBA in June 2003, 2004 and 2005;

2) regularize workers Dindo Buella and 60 other workers and to respect CBA provision on contracting-out labor;

3) recondition the company vehicle pursuant to the CBA;

4) answer for expenses involved in providing first aid services including transportation expenses for this purpose, as well as to reimburse Rodrigo Solitario the sum of ₱2,113.00;

5) pay wages of union members/officers who attended grievance meetings as follows:

1)	D. Serenilla	-	₱115.24375
2)	D. Miralpes	-	₱115.80625
3)	E. Mallari	-	₱108.7625
4)	C. Cruz	-	₱114.65313
5)	J. Patalbo	-	₱161.0625
6)	J.J. Muñoz	-	₱111.19375
7)	C. Guadaña	-	₱ 56.94375
8)	J. Patalbo	-	₱161.0625
9)	E. Mallari	-	₱108.7625
10)	C. Guadaña	-	₱113.8875
11)	A. Marigondon	-	₱170.30625
12)	A. Marigondon	-	₱181.66
13)	A. Marigondon	-	₱181.66
14)	E. Masangcay	-	₱175.75
15)	A. Marigondon	-	₱181.66
16)	E. Masangcay	-	₱175.75
17)	A. Marigondon	-	₱181.66
18)	F. Servano	-	₱174.02
19)	R. Estrella	-	₱181.50
20)	A. Marigondon	-	₱181.66

6) pay workers their salary for the 3 hours of the 4 hour brownout as follows:

1)	Alagon, Jr., Pedro	-	₱130.0875
2)	Aliwalas, Cristeto	-	₱108.5625
3)	Baltazar, Roderick	-	₱ 90.1875

4)	Bañez, Oliver	-	₱ 90.9375
5)	Prucal, Eduardo	-	₱126.015
6)	Calimquin, Rodillo	-	₱131.0362
7)	Clave, Arturo	-	₱125.64
8)	Cadavero, Rey	-	₱108.5625
9)	De Leon, Romulo	-	₱124.35
10)	Lactao, Noli	-	₱126.015
11)	Layco, Jr., Dandino	-	₱130.5375
12)	Legaspi, Melencio	-	₱127.63
13)	Quiachon, Rogelio	-	₱130.5525
14)	Sacmar, Roberto	-	₱108.9375
15)	Tagle, Farian	-	₱129.3375
16)	Villavicencio, Victor	-	₱126.015
17)	Agra, Romale	-	₱126.015
18)	Basabe, Luis	-	₱128.5575
19)	Bornasal, Joel	-	₱127.53
20)	Casitas, Santiago	-	₱128.5575
21)	Celajes, Bonifacio	-	₱128.1825
22)	Avenido, Jerry	-	₱133.2487
23)	Gagarin, Alfredo	-	₱108.9375
24)	Layson, Paulo	-	₱131.745
25)	Lledo, Asalem	-	₱128.5575
26)	Marigondon, Ariel	-	₱131.745
27)	Orcena, Sonnie	-	₱126.015
28)	Servano, Fernando	-	₱126.015
29)	Versola, Rodrigo	-	₱126.015

7) reinstate Diosdado Madayag to his former position without loss of seniority rights and to pay full backwages and other benefits from 14 March 2005, date of dismissal, until the date of this Decision; if reinstatement is impossible[,] to pay separation pay of one month pay for every year of service in addition to backwages;

8) dismiss the claim for paternity leave for failure of claimants to observe the requirements;

9) dismiss the charge of harassment and discrimination for lack of merit; and to

10) continue to implement COLA under Wage Order Nos. [RBIII]-10 & 11 across the board.

The issue on Visitors' Free Access to Company Premises is dismissed for being moot and academic after it was settled during the scheduled conferences.

SO ORDERED.[43]

Forthwith, petitioner elevated the case to the CA, reiterating its arguments on the eight issues resolved by the NLRC in respondent's favor.

The CA's Ruling

On September 30, 2008, the CA rendered a decision dismissing the petition, thus:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. The assailed Decision dated March 30, 2007 and Resolution dated April 28, 2008 of the National Labor Relations Commission in NLRC NCR CC No. 000305-05 are hereby AFFIRMED.

With costs against the petitioner.

SO ORDERED.[44]

According to the CA, petitioner failed to show that the NLRC committed grave abuse of discretion in finding that it violated certain provisions of the CBA. The NLRC correctly held that every employee is entitled to the wage increase under the CBA despite receipt of an anniversary increase. The CA concluded that, based on the wording of the CBA, which uses the words "general increase" and "over and above," it cannot be said that the parties have intended the anniversary increase to be given in lieu of the CBA wage increase.[45]

The CA declared that the withdrawal of the COLA under Wage Order No. RBIII-10 from the employees who were not minimum wage earners amounted to a diminution of benefits because such grant has already ripened into a company practice.

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[43] *Id.* at 133-136.

[44] *Id.* at 61.

[45] *Id.* at 54.

It pointed out that there was no ambiguity or doubt as to who were covered by the wage order. Petitioner, therefore, may not invoke error or mistake in extending the COLA to all employees and such act can only be construed as "as a voluntary act on the part of the employer."[46] The CA opined that, considering the foregoing, the ruling in *Globe Mackay Cable and Radio Corp. v. NLRC*[47] clearly did not apply as there was no doubtful or difficult question involved in the present case.[48]

The CA sustained the NLRC's interpretation of Art. VIII, Section 4 of the CBA as including the expenses for first aid medicine and transportation cost in going to the hospital. The CA stressed that the CBA should be construed liberally rather than narrowly and technically, and the courts must place a practical and realistic construction upon it, giving due consideration to the context in which it was negotiated and the purpose which it intended to serve.[49]

Based on the principle of liberal construction of the CBA, the CA likewise sustained the NLRC's rulings on the issues pertaining to the shuttle service, time-off for attendance in grievance meetings/hearings, and time-off due to brownouts.[50]

The CA further held that management prerogative is not unlimited: it is subject to limitations found in law, a CBA, or the general principles of fair play and justice. It stressed that the CBA provided such limitation on management prerogative to contract-out labor, and compliance with the CBA is mandated by the express policy of the law.[51]

Finally, the CA affirmed the NLRC's finding that Madayag's dismissal was illegal. It emphasized that the burden to prove

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[46] *Id.* at 54-55.

[47] 163 Phil. 71 (1988).

[48] *Rollo,* p. 55.

[49] *Id.* at 55-56.

[50] *Id.* at 56.

[51] *Id.*

that the employee's disease is of such nature or at such stage that it cannot be cured within a period of six months rests on the employer. Petitioner failed to submit a certification from a competent public authority attesting to such fact; hence, Madayag's dismissal is illegal.[52]

Petitioner moved for a reconsideration of the CA's decision. On December 4, 2008, the CA denied the motion for lack of merit.[53]

Dissatisfied, petitioner filed this petition for review on *certiorari*, contending that the CA erred in finding that it violated certain provisions of the CBA.

The Court's Ruling

The petition is partly meritorious.

It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and compliance therewith is mandated by the express policy of the law. If the terms of a CBA are clear and there is no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall prevail.[54] Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic construction upon it.[55] Any doubt in the interpretation of any law or provision affecting labor should be resolved in favor of labor.[56]

Upon these well-established precepts, we sustain the CA's findings and conclusions on all the issues, except the issue pertaining to the denial of the COLA under Wage Order Nos. RBIII-10 and 11 to the employees who are not minimum wage earners.

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[52] *Id.* at 56-61.

[53] *Id.* at 33.

[54] *United Kimberly-Clark Employees Union-Philippine Transport General Workers' Organization (UKCEU-PTGWO) v. Kimberly-Clark Philippines, Inc.*, G.R. No. 162957, March 6, 2006, 484 SCRA 187, 202.

[55] *Id.* at 203.

[56] *Faculty Association of Mapua Institute of Technology (FAMIT) v. Court of Appeals*, G.R. No. 164060, June 15, 2007, 524 SCRA 709, 717.

The wording of the CBA on general wage increase cannot be interpreted any other way: The CBA increase should be given to all employees "over and above" the amount they are receiving, even if that amount already includes an anniversary increase. Stipulations in a contract must be read together, not in isolation from one another.[57] Consideration of Article XIII, Section 2 (non-crediting provision), bolsters such interpretation. Section 2 states that "[a]ll salary increase granted by the company shall not be credited to any future contractual or legislated wage increases." Clearly then, even if petitioner had already awarded an anniversary increase to its employees, such increase cannot be credited to the "contractual" increase as provided in the CBA, which is considered "separate and distinct."

Petitioner claims that it has been the company practice to offset the anniversary increase with the CBA increase. It however failed to prove such material fact. Company practice, just like any other fact, habits, customs, usage or patterns of conduct must be proven. The offering party must allege and prove specific, repetitive conduct that might constitute evidence of habit,[58] or company practice. Evidently, the pay slips of the four employees do not serve as sufficient proof.

Petitioner's excuse in not providing a shuttle service to its employees is unacceptable. In fact, it can hardly be considered as an excuse. Petitioner simply says that it is difficult to implement the provision. It relies on the fact that "no time element [is] explicitly stated [in the CBA] within which to fulfill the undertaking." We cannot allow petitioner to dillydally in complying with its obligation and take undue advantage of the fact that no period is provided in the CBA. Petitioner should recondition the company vehicle at once, lest it be charged with and found guilty of unfair labor practice.

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[57] *Norkis Free and Independent Workers Union v. Norkis Trading Company, Inc.*, 501 Phil. 170, 178 (2005).

[58] *Pag-Asa Steel Works, Inc. v. Court of Appeals*, G.R. No. 166647, March 31, 2006, 486 SCRA 475, 497.

Petitioner gave a narrow construction to the wording of the CBA when it denied (a) reimbursement for the first-aid medicines taken by Rodrigo Solitario when he was injured during the company sportsfest and the transportation cost incurred by Alberto Guevara and Job Canizares in going to the hospital, (b) payment of the wages of certain employees during the time they spent at the grievance meetings, and (c) payment of the employees' wages during the brownout that occurred on July 25, 2002. As previously stated, the CBA must be construed liberally rather than narrowly and technically. It is the duty of the courts to place a practical and realistic construction upon the CBA, giving due consideration to the context in which it is negotiated and the purpose which it is intended to serve. Absurd and illogical interpretations should be avoided.[59] A CBA, like any other contract, must be interpreted according to the intention of the parties.[60]

The CA was correct in pointing out that the concerned employees were not seeking hospitalization benefits under Article VIII, Section 1 of the CBA, but under Section 4 thereof; hence, confinement in a hospital is not a prerequisite for the claim. Petitioner should reimburse Solitario for the first aid medicines; after all, it is the duty of the employer to maintain first- aid medicines in its premises.[61] Similarly, Guevara and Canizares should also be reimbursed for the transportation cost incurred in going to the hospital. The Omnibus Rules Implementing the Labor Code provides that, where the employer

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[59] *TSPIC Corporation v. TSPIC Employees Union (FFW)*, G.R. No. 163419, February 13, 2008, 545 SCRA 215, 226.

[60] *Id*.

[61] Section 3, Rule 1, Book Four of the Omnibus Rules Implementing the Labor Code provides:

SECTION 3. Medicines and facilities. — Every employer shall keep in or about his work place the first-aid medicines, equipment and facilities that shall be prescribed by the Department of Labor and Employment within 5 days from the issuance of these regulations. The list of medicines, equipment and facilities may be revised from time to time by the Bureau of Working Conditions, subject to the approval of the Secretary of Labor and Employment.

does not have an emergency hospital in its premises, the employer is obliged to transport an employee to the nearest hospital or clinic in case of emergency.[62]

We likewise agree with the CA on the issue of nonpayment of the time-off for attending grievance meetings. The intention of the parties is obviously to compensate the employees for the time that they spend in a grievance meeting as the CBA provision categorically states that the company will pay the employee "a paid time-off for handling of grievances, investigations, labor-management conferences." It does not make a qualification that such meeting should be held during office hours or within the company premises.

The employees should also be compensated for the time they were prevented from working due to the brownout. The CBA enumerates some of the instances considered as "emergencies" and these are "typhoons, flood earthquake, transportation strike." As correctly argued by respondent, the CBA does not exclusively enumerate the situations which are considered "emergencies." Obviously, the key element of the provision is that employees "who have reported for work are unable to continue working" because of the incident. It is therefore reasonable to conclude that brownout or power outage is considered an "emergency" situation.

Again, on the issue of contracting-out labor, we sustain the CA. Petitioner, in effect, admits having hired "temporary"

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[62] Section 5, Rule 1, Book Four of the Omnibus Rules Implementing the Labor Code provides:

SECTION 5. Emergency hospital. — An employer need not put up an emergency hospital or dental clinic in the work place as required in these regulations where there is a hospital or dental clinic which is not more than five (5) kilometers away from the work place if situated in any urban area or which can be reached by motor vehicle in twenty-five (25) minutes of travel, if situated in a rural area and *the employer has facilities readily available for transporting a worker to the hospital or clinic in case of emergency*: Provided, That the employer shall enter into a written contract with the hospital or dental clinic for the use thereof in the treatment of workers in case of emergency. (Emphasis supplied.)

employees, but it maintains that it was an exercise of management prerogative, necessitated by the increase in demand for its product.

Indeed, jurisprudence recognizes the right to exercise management prerogative. Labor laws also discourage interference with an employer's judgment in the conduct of its business. For this reason, the Court often declines to interfere in legitimate business decisions of employers. The law must protect not only the welfare of employees, but also the right of employers.[63] However, the exercise of management prerogative is not unlimited. Managerial prerogatives are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[64] The CBA is the norm of conduct between the parties and, as previously stated, compliance therewith is mandated by the express policy of the law.[65]

The CBA is clear in providing that temporary employees will no longer be allowed in the company except in the Warehouse and Packing Section. Petitioner is bound by this provision. It cannot exempt itself from compliance by invoking management prerogative. Management prerogative must take a backseat when faced with a CBA provision. If petitioner needed additional personnel to meet the increase in demand, it could have taken measures without violating the CBA.

Respondent claims that the temporary employees were hired on five-month contracts, renewable for another five months. After the expiration of the contracts, petitioner would hire other persons for the same work, with the same employment status.

Plainly, petitioner's scheme seeks to prevent employees from acquiring the status of regular employees. But the Court has already held that, where from the circumstances it is apparent that the periods of employment have been imposed to preclude

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[63] *Endico v. Quantum Foods Distribution Center*, G.R. No. 161615, January 30, 2009, 577 SCRA 299, 309.

[64] *DOLE Philippines, Inc. v. Pawis ng Makabayang Obrero (PAMAO-NFL)*, 443 Phil. 143, 149 (2003).

[65] *Id.* at 150.

acquisition of security of tenure by the employee, they should be struck down or disregarded as contrary to public policy and morals.[66] The primary standard to determine a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business of the employer. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.[67]

We also uphold the CA's finding that Madayag's dismissal was illegal. It is already settled that the burden to prove the validity of the dismissal rests upon the employer. Dismissal based on Article 284 of the Labor Code is no different, thus:

> The law is unequivocal: the employer, before it can legally dismiss its employee on the ground of disease, must adduce a certification from a competent public authority that the disease of which its employee is suffering is of such nature or at such a stage that it cannot be cured within a period of six months even with proper treatment.
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In *Triple Eight Integrated Services, Inc. v. NLRC,* the Court explains why the submission of the requisite medical certificate is for the employer's compliance, thus:

> The requirement for a medical certificate under Article 284 of the Labor Code cannot be dispensed with; otherwise, it would sanction the unilateral and arbitrary determination by the employer of the gravity or extent of the employee's illness and thus defeat the public policy on the protection of labor.

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[66] *Philips Semiconductors (Phils.), Inc. v. Fadriquela,* 471 Phil. 355, 372 (2004), citing *Brent School, Inc. v. Zamora,* 260 Phil. 747 (1990).

[67] *Id.* at 369-370.

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However, with respect to the issue of whether the COLA under Wage Order Nos. RBIII-10 and 11 should be implemented across the board, we hold a different view from that of the CA. No diminution of benefits would result if the wage orders are not implemented across the board, as no such company practice has been established.

Diminution of benefits is the unilateral withdrawal by the employer of benefits already enjoyed by the employees. There is diminution of benefits when it is shown that: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.[69]

To recall, the CA arrived at its ruling by relying on the fact that there was no ambiguity in the wording of the wage order as to the employees covered by it. From this, the CA concluded that petitioner actually made no error or mistake, but acted voluntarily, in granting the COLA to all its employees. It therefore took exception to the *Globe Mackay* case which, according to it, applies only when there is a doubtful or difficult question involved.

The CA failed to note that *Globe Mackay* primarily emphasized that, for the grant of the benefit to be considered voluntary, "it should have been practiced over a long period of time, and must be shown to have been consistent and deliberate."[70] The fact that the practice must not have been due to error in the construction or application of a doubtful or difficult question of law is a distinct requirement.

The implementation of the COLA under Wage Order No. RBIII-10 across the board, which only lasted for less than a

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[68] *Duterte v. Kingswood Trading Co., Inc.*, G.R. No. 160325, October 4, 2007, 534 SCRA 607, 614-615.

[69] *TSPIC Corporation v. TSPIC Employees Union (FFW)*, note 59 at 232.

[70] *Globe Mackay Cable and Radio Corp. v. NLRC*, note 47 at 77.

year, cannot be considered as having been practiced "over a long period of time." While it is true that jurisprudence has not laid down any rule requiring a specific minimum number of years in order for a practice to be considered as a voluntary act of the employer, under existing jurisprudence on this matter, an act carried out within less than a year would certainly not qualify as such. Hence, the withdrawal of the COLA Wage Order No. RBIII-10 from the salaries of non-minimum wage earners did not amount to a "diminution of benefits" under the law.

There is also no basis in enjoining petitioner to implement Wage Order No. RBIII-11 across the board. Similarly, no proof was presented showing that the implementation of wage orders across the board has ripened into a company practice. In the same way that we required petitioner to prove the existence of a company practice when it alleged the same as defense, at this instance, we also require respondent to show proof of the company practice as it is now the party claiming its existence. Absent any proof of specific, repetitive conduct that might constitute evidence of the practice, we cannot give credence to respondent's claim. The isolated act of implementing a wage order across the board can hardly be considered a company practice,[71] more so when such implementation was erroneously made.

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED.* The CA Decision September 30, 2008 and Resolution dated December 4, 2008 are *AFFIRMED with MODIFICATION* that the order for petitioner to continue implementing Wage Order Nos. RBIII-10 and 11 across the board is *SET ASIDE.* Accordingly, item 10 of the NLRC Decision dated March 30, 2007 is modified to read "dismiss the claim for implementation of Wage Order Nos. RBIII-10 and 11 to the employees who are not minimum wage earners."

SO ORDERED.

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

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[71] *Pag-Asa Steel Works, Inc. v. Court of Appeals,* note 58 at 499.

SECOND DIVISION

[G.R. No. 187425. March 28, 2011]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **AGFHA INCORPORATED,** *respondent.*

SYLLABUS

1. TAXATION; COMMISSIONER OF CUSTOMS; FOR LOST SHIPMENT UNDER HIS CUSTODY, THE COMMISSIONER IS LIABLE FOR THE VALUE THEREOF WHICH IS THE ACQUISITION COST *AT THE TIME OF ACTUAL PAYMENT.*— The Court agrees with the ruling of the CTA that AGFHA is entitled to recover the value of its lost shipment based on the acquisition cost at the time of payment. In the case of *C.F. Sharp and Co., Inc. v. Northwest Airlines, Inc.* the Court ruled that the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment: In ruling that the applicable conversion rate of petitioner's liability is the rate at the time of payment, the Court of Appeals cited the case of *Zagala v. Jimenez*, interpreting the provisions of Republic Act No. 529, as amended by R.A. No. 4100. Under this law, stipulations on the satisfaction of obligations in foreign currency are void. Payments of monetary obligations, subject to certain exceptions, shall be discharged in the currency which is the legal tender in the Philippines. But since R.A. No. 529 does not provide for the rate of exchange for the payment of foreign currency obligations incurred after its enactment, the Court held in a number of cases that **the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment.** Likewise, in the case of *Republic of the Philippines represented by the Commissioner of Customs v. UNIMEX Micro-Electronics GmBH*, which involved the seizure and detention of a shipment of computer game items which disappeared while in the custody of the Bureau of Customs, the Court upheld the decision of the CA holding that petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.

2. ID.; ID.; ID.; STATE IMMUNITY DOCTRINE, NOT APPLICABLE. — On the issue regarding the state immunity doctrine, the Commissioner cannot escape liability for the lost shipment of goods. This was clearly discussed in the *UNIMEX Micro-Electronics GmBH* decision, where the Court wrote*:* Finally, petitioner argues that a money judgment or any charge against the government requires a corresponding appropriation and cannot be decreed by mere judicial order. Although it may be gainsaid that the satisfaction of respondent's demand will ultimately fall on the government, and that, under the political doctrine of "state immunity," it cannot be held liable for governmental acts (*jus imperii*), we still hold that petitioner cannot escape its liability. The circumstances of this case warrant its exclusion from the purview of the state immunity doctrine. **As previously discussed, the Court cannot turn a blind eye to BOC's ineptitude and gross negligence in the safekeeping of respondent's goods. We are not likewise unaware of its lackadaisical attitude in failing to provide a cogent explanation on the goods' disappearance, considering that they were in its custody and that they were in fact the subject of litigation. The situation does not allow us to reject respondent's claim on the mere invocation of the doctrine of state immunity. Succinctly, the doctrine must be fairly observed and the State should not avail itself of this prerogative to take undue advantage of parties that may have legitimate claims against it.** In *Department of Health v. C.V. Canchela & Associates*, we enunciated that this Court, as the staunch guardian of the people's rights and welfare, cannot sanction an injustice so patent in its face, and allow itself to be an instrument in the perpetration thereof. Over time, courts have recognized with almost pedantic adherence that what is inconvenient and contrary to reason is not allowed in law. Justice and equity now demand that the State's cloak of invincibility against suit and liability be shredded.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rico & Associates 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 assailing the February 25, 2009 Decision[1] of the Court of Tax Appeals En Banc *(CTA-En Banc)*, in CTA EB Case No. 136, which affirmed the October 18, 2005 Resolution[2] of its Second Division *(CTA-Second Division)*, in CTA Case No. 5290, finding petitioner, the Commissioner of Customs *(Commissioner)*, liable to pay respondent AGFHA Incorporated *(AGFHA)* the amount of US$160,348.08 for the value of the seized shipment which was lost while in petitioner's custody.

On December 12, 1993, a shipment containing bales of textile grey cloth arrived at the Manila International Container Port *(MICP)*. The Commissioner, however, held the subject shipment because its owner/consignee was allegedly fictitious. AGFHA intervened and alleged that it was the owner and actual consignee of the subject shipment.

On September 5, 1994, after seizure and forfeiture proceedings took place, the District Collector of Customs, MICP, rendered a decision[3] ordering the forfeiture of the subject shipment in favor of the government.

AGFHA filed an appeal. On August 25, 1995, the Commissioner rendered a decision[4] dismissing it.

On November 4, 1996, the CTA-Second Division reversed the Commissioner's August 25, 1995 Decision and ordered the

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[1] *Rollo*, pp. 44-63. Penned by Associate Justice Caesar A. Casanova with Associate Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, and Associate Justice Olga Palanca-Enriquez, concurring.

[2] CTA Records, pp. 532-552.

[3] *Id.* at 90-95.

[4] *Id.* at 96-100.

immediate release of the subject shipment to AGFHA. The dispositive portion of the CTA-Second Division Decision[5] reads:

> WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **GRANTED**. Accordingly, the decision of the respondent in Customs Case No. 94-017, dated August 25, 1995, affirming the decision of the MICP Collector, dated September 5, 1994, which decreed the forfeiture of the subject shipments in favor of the government, is hereby **REVERSED** and **SET ASIDE**. Respondent is hereby **ORDERED** to effect the immediate **RELEASE** of the subject shipment of goods in favor of the petitioner. No costs.
>
> SO ORDERED.

On November 27, 1996, the CTA-Second Division issued an entry of judgment declaring the above-mentioned decision final and executory.[6]

Thereafter, on May 20, 1997, AGFHA filed a motion for execution.

In its June 4, 1997 Resolution, the CTA-Second Division held in abeyance its action on AGFHA's motion for execution in view of the Commissioner's appeal with the Court of Appeals *(CA)*, docketed as CA-G.R. SP No. 42590 and entitled *"Commissioner of Custom v. The Court of Tax Appeals and AGFHA, Incorporated."*

On May 31, 1999, the CA denied due course to the Commissioner's appeal for lack of merit in a decision,[7] the dispositive portion of which reads:

> WHEREFORE, the instant petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the Commissioner of Customs is hereby ordered to effect the immediate release of the shipment of AGFHA, Incorporated described as "2 x 40"

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[5] *Id.* at 110-136.

[6] *Id.* at 138.

[7] *Id.* at 279-296. Penned by Associate Justice B.A. Adefuin-De La Cruz with Associate Justice Fermin A. Martin, Jr. and Associate Justice Presbitero J. Velasco, Jr. (now with the Supreme Court), concurring.

Cont. No. NYKU-6772906 and NYKU-6632117 STA 197 Bales of Textile Grey Cloth" placed under Hold Order No. H/CI/01/2293/01 dated 22 January 1993.

No costs.

SO ORDERED.

Thereafter, the Commissioner elevated the aforesaid CA Decision to this Court via a petition for review on *certiorari*, docketed as G.R. No. 139050 and entitled *"Republic of the Philippines represented by the Commissioner of Customs v. The Court of Tax Appeals and AGFHA, Inc."*

On October 2, 2001, the Court dismissed the petition.[8]

On January 14, 2002, the Court denied with finality the Commissioner's motion for reconsideration of its October 2, 2001 Decision.

On March 18, 2002, the Entry of Judgment was issued by the Court declaring its aforesaid decision final and executory as of February 5, 2002.

In view thereof, the CTA-Second Division issued the Writ of Execution, dated October 16, 2002, directing the Commissioner and his authorized subordinate or representative to effect the immediate release of the subject shipment. It further ordered the sheriff to see to it that the writ would be carried out by the Commissioner and to make a report thereon within thirty (30) days after receipt of the writ. The writ, however, was returned unsatisfied.

On July 23, 2003, the CTA-Second Division received a copy of AGFHA's Motion to Show Cause dated July 21, 2003.

Acting on the motion, the CTA-Second Division issued a notice setting it for hearing on August 1, 2003 at 9:00 o'clock in the morning.

In its August 13, 2003 Resolution, the CTA-Second Division granted AGFHA's motion and ordered the Commissioner to

[8] SC Decision, *id.* at 462-473.

show cause within fifteen (15) days from receipt of said resolution why he should not be disciplinary dealt with for his failure to comply with the writ of execution.

On September 1, 2003, Commissioner's counsel filed a Manifestation and Motion, dated August 28, 2003, attaching therewith a copy of an Explanation (With Motion for Clarification) dated August 11, 2003 stating, *inter alia*, that despite diligent efforts to obtain the necessary information and considering the length of time that had elapsed since the subject shipment arrived at the Bureau of Customs, the Chief of the Auction and Cargo Disposal Division of the MICP could not determine the status, whereabouts and disposition of said shipment.

Consequently, AGFHA filed its Motion to Cite Petitioner in Contempt of Court dated September 13, 2003. After a series of pleadings, on November 17, 2003, the CTA-Second Division denied, among others, AGFHA's motion to cite petitioner in contempt for lack of merit. It, however, stressed that the denial was without prejudice to other legal remedies available to AGFHA.

On August 13, 2004, the Commissioner received AGFHA's Motion to Set Case for Hearing, dated April 12, 2004, allegedly to determine: (1) whether its shipment was actually lost; (2) the cause and/or circumstances surrounding the loss; and (3) the amount the Commissioner should pay or indemnify AGFHA should the latter's shipment be found to have been actually lost.

On May 17, 2005, after the parties had submitted their respective memoranda, the CTA-Second Division adjudged the Commissioner liable to AGFHA. Specifically, the dispositive portion of the resolution reads:

> WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, INC. for the value of the subject shipment in the amount of ONE HUNDERED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT AND 08/100 US DOLLARS (US$160,348.08). The Bureau of Custom's liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality

of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.

The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.

SO ORDERED.[9]

On June 10, 2005, the Commissioner filed his Motion for Partial Reconsideration arguing that (a) the enforcement and satisfaction of respondent's money claim must be pursued and filed with the Commission on Audit pursuant to Presidential Decree (P.D.) No. 1445; (b) respondent is entitled to recover only the value of the lost shipment based on its acquisition cost at the time of importation; and (c) taxes and duties on the subject shipment must be deducted from the amount recoverable by respondent.

On the same day, the Commissioner received AGFHA's Motion for Partial Reconsideration claiming that the 12% interest rate should be computed from the time its shipment was lost on June 15, 1999 considering that from such date, petitioner's obligation to release their shipment was converted into a payment for a sum of money.

On October 18, 2005, after the filing of several pleadings, the CTA-Second Division promulgated a resolution which reads:

WHEREFORE, premises considered, respondent Commissioner of Customs' "Motion for Partial Reconsideration" is hereby **PARTIALLY GRANTED**. The Resolution dated May 17, 2005 is hereby **MODIFIED** but only insofar as the Court did not impose the payment of the proper duties and taxes on the subject shipment. Accordingly, the dispositive portion of Our Resolution, dated May 17, 2005, is hereby **MODIFIED** to read as follows:

> WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, INC. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY

[9] *Id.* at 460-461.

> THOUSAND THREE HUNDRED FORTY–EIGHT AND 08/100 US DOLLARS (US$160,348.08), subject however, to the payment of the prescribed taxes and duties, at the time of the importation. The Bureau of Custom's liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.
>
> The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.
>
> SO ORDERED.
>
> Petitioner AGFHA, Inc.'s "Motion for Partial Reconsideration" is hereby DENIED for lack of merit.
>
> SO ORDERED.[10]

Consequently, the Commissioner elevated the above-quoted resolution to the CTA-En Banc.

On February 25, 2009, the CTA-En Banc promulgated the subject decision dismissing the petition for lack of merit and affirming *in toto* the decision of the CTA-Second Division.

On March 18, 2009, the Commissioner filed his Motion for Reconsideration, but it was denied by the CTA-En Banc in its April 13, 2009 Resolution.

Hence, this petition.

ISSUE

Whether or not the Court of Tax Appeals was correct in awarding the respondent the amount of US$160,348.08, as payment for the value of the subject lost shipment that was in the custody of the petitioner.

In his petition, the Commissioner basically argues two (2) points: 1] the respondent is entitled to recover the value of the

[10] *Id.* at 551-552.

lost shipment based only on its acquisition cost at the time of importation; and 2] the present action has been theoretically transformed into a suit against the State, hence, the enforcement/ satisfaction of petitioner's claim must be pursued in another proceeding consistent with the rule laid down in P.D. No. 1445.

He further argues that the basis for the exchange rate of its liability lacks basis. Based on the Memorandum, dated August 27, 2002, of the Customs Operations Officers, the true value of the subject shipment is US$160,340.00 based on its commercial invoices which have been found to be spurious. The subject shipment arrived at the MICP on December 12, 1992 and the peso-dollar exchange rate was ₱20.00 per US$1.00. Thus, this conversion rate must be applied in the computation of the total land cost of the subject shipment being claimed by AGFHA or ₱3,206,961.60 plus interest.

The Commissioner further contends that based on Executive Order No. 688 (The 1999 Tariff and Customs Code of the Philippines), the proceeds from any legitimate transaction, conveyance or sale of seized and/or forfeited items for importations or exportations by the customs bureau cannot be lawfully disposed of by the petitioner to satisfy respondent's money judgment. EO 688 mandates that the unclaimed proceeds from the sale of forfeited goods by the Bureau of Customs *(BOC)* will be considered as customs receipts to be deposited with the Bureau of Treasury and shall form part of the general funds of the government. Any disposition of the said unclaimed proceeds from the sale of forfeited goods will be violative of the Constitution, which provides that "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[11]

Thus, the Commissioner posits that this case has been transformed into a suit against the State because the satisfaction of AGFHA's claim will have to be taken from the national coffers. The State may not be sued without its consent. The

[11] Section 29 (1), Article VI of the 1987 Philippine Constitution.

BOC enjoys immunity from suit since it is invested with an inherent power of sovereignty which is taxation.

To recover the alleged loss of the subject shipment, AGFHA's remedy here is to file a money claim with the Commission on Audit *(COA)* pursuant to Act No. 3083 (An Act Defining the Condition under which the Government of the Philippine Island may be Sued) and Commonwealth Act No. 327 (An Act Fixing the Time within which the Auditor General shall render his Decisions and Prescribing the Manner of Appeal therefrom, as amended by P.D. No. 1445). Upon the determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines.

On the other hand, AGFHA counters that, in line with prevailing jurisprudence, the applicable peso-dollar exchange rate should be the one prevailing at the time of actual payment in order to preserve the real value of the subject shipment to the date of its payment. The CTA-En Banc Decision does not constitute a money claim against the State. The Commissioner's obligation to return the subject shipment did not arise from an import-export contract but from a quasi-contract particularly *solutio indebiti* under Article 2154 of the Civil Code. The payment of the value of the subject lost shipment was in accordance with Article 2159 of the Civil Code. The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen. When the State violates its own laws, it cannot invoke the doctrine of state immunity to evade liability. The commission of an unlawful or illegal act on the part of the State is equivalent to implied consent.

THE COURT'S RULING

The petition lacks merit.

The Court agrees with the ruling of the CTA that AGFHA is entitled to recover the value of its lost shipment based on the acquisition cost at the time of payment.

In the case of *C.F. Sharp and Co., Inc. v. Northwest Airlines, Inc.* the Court ruled that the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment:

> In ruling that the applicable conversion rate of petitioner's liability is the rate at the time of payment, the Court of Appeals cited the case of *Zagala v. Jimenez*, interpreting the provisions of Republic Act No. 529, as amended by R.A. No. 4100. Under this law, stipulations on the satisfaction of obligations in foreign currency are void. Payments of monetary obligations, subject to certain exceptions, shall be discharged in the currency which is the legal tender in the Philippines. But since R.A. No. 529 does not provide for the rate of exchange for the payment of foreign currency obligations incurred after its enactment, the Court held in a number of cases that **the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment**.[12] [Emphases supplied]

Likewise, in the case of *Republic of the Philippines represented by the Commissioner of Customs v. UNIMEX Micro-Electronics GmBH*,[13] which involved the seizure and detention of a shipment of computer game items which disappeared while in the custody of the Bureau of Customs, the Court upheld the decision of the CA holding that petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.

On the issue regarding the state immunity doctrine, the Commissioner cannot escape liability for the lost shipment of goods. This was clearly discussed in the *UNIMEX Micro-Electronics GmBH* decision, where the Court wrote:

> Finally, petitioner argues that a money judgment or any charge against the government requires a corresponding appropriation and cannot be decreed by mere judicial order.
>
> Although it may be gainsaid that the satisfaction of respondent's demand will ultimately fall on the government, and that, under the political doctrine of "state immunity," it cannot be held liable for

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[12] 431 Phil. 11, 18 (2002).

[13] G.R. Nos. 166309-10, March 9, 2007, 518 SCRA 19.

governmental acts (*jus imperii*), we still hold that petitioner cannot escape its liability. The circumstances of this case warrant its exclusion from the purview of the state immunity doctrine.

As previously discussed, the Court cannot turn a blind eye to BOC's ineptitude and gross negligence in the safekeeping of respondent's goods. We are not likewise unaware of its lackadaisical attitude in failing to provide a cogent explanation on the goods' disappearance, considering that they were in its custody and that they were in fact the subject of litigation. The situation does not allow us to reject respondent's claim on the mere invocation of the doctrine of state immunity. Succinctly, the doctrine must be fairly observed and the State should not avail itself of this prerogative to take undue advantage of parties that may have legitimate claims against it.

In *Department of Health v. C.V. Canchela & Associates*, we enunciated that this Court, as the staunch guardian of the people's rights and welfare, cannot sanction an injustice so patent in its face, and allow itself to be an instrument in the perpetration thereof. Over time, courts have recognized with almost pedantic adherence that what is inconvenient and contrary to reason is not allowed in law. Justice and equity now demand that the State's cloak of invincibility against suit and liability be shredded.

Accordingly, we agree with the lower courts' directive that, upon payment of the necessary customs duties by respondent, petitioner's "payment shall be taken from the sale or sales of goods or properties seized or forfeited by the Bureau of Customs."

WHEREFORE, the assailed decisions of the Court of Appeals in CA-G.R. SP Nos. 75359 and 75366 are hereby AFFIRMED with MODIFICATION. Petitioner Republic of the Philippines, represented by the Commissioner of the Bureau of Customs, upon payment of the necessary customs duties by respondent Unimex Micro-Electronics GmBH, is hereby ordered to pay respondent the value of the subject shipment in the amount of Euro 669,982.565. Petitioner's liability may be paid in Philippine currency, computed at the exchange rate **prevailing <u>at the time of actual payment</u>**.

SO ORDERED.[14] [Emphases supplied]

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[14] *Id.* at 32-34.

In line with the ruling in *UNIMEX Micro-Electronics GmBH*, the Commissioner of Customs should pay AGFHA the value of the subject lost shipment in the amount of US$160,348.08 which liability may be paid in Philippine currency computed at the exchange rate prevailing at the time of the actual payment.

WHEREFORE, the February 25, 2009 Decision of the Court of Tax Appeals *En Banc*, in CTA EB Case No. 136, is *AFFIRMED.* The Commissioner of Customs is hereby ordered to pay, in accordance with law, the value of the subject lost shipment in the amount of US$160,348.08, computed at the exchange rate prevailing at the time of actual payment after payment of the necessary customs duties.

SO ORDERED.

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

EN BANC

[A.M. No. P-09-2637. March 29, 2011]
(Formerly A.M. No. 08-12-682-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. MAGDALENA L. LOMETILLO, Former Clerk of Court VII, VICTORIA S. PATOPATEN, Cashier II, LINDA C. GUIDES, Administrative Officer I, LENNY GEMMA P. CASTILLO, Clerk III, and BRENDA M. LINACERO, Clerk III, All of Regional Trial Court, Iloilo City,** *respondents.*

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated July 15, 2009.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SERVICE WITH LOYALTY, INTEGRITY AND EFFICIENCY IS REQUIRED OF ALL PUBLIC OFFICERS AND EMPLOYEES WHO MUST, AT ALL TIMES, BE ACCOUNTABLE TO THE PEOPLE.— No less than the Constitution mandates that "public office is a public trust." In a long line of cases, the Court has untiringly reminded employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Whether committed by the highest official or by the lowest member of the workforce, any act of impropriety can seriously erode the people's confidence in the judiciary. Thus, the Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary. Service with loyalty, integrity and efficiency is required of all public officers and employees, who must, at all times, be accountable to the people.

2. ID.; ID.; CLERK OF COURT; FUNCTION AS CUSTODIAN OF THE COURT'S FUNDS, REVENUES, RECORDS, PROPERTY AND PREMISES, EXPLAINED; CASE AT BAR.— A number of non-judicial concerns connected with trial and adjudication of cases is handled by the clerk of court, demanding a dynamic performance of duties, with the prompt and proper administration of justice as the constant objective. The nature of the work and of the office mandates that the clerk of court be an individual of competence, honesty and integrity. The Clerks of Court perform a very delicate function as custodian of the court's funds, revenues, records, property and premises. They wear many hats – those of treasurer, accountant, guard and physical plant manager of the court, hence, they are "entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds" and are thus, "liable for any loss, shortage, destruction or impairment of such funds and property." In this case, it appears that Atty. Lometillo utterly failed to perform her duties with the degree of diligence and competence expected of a clerk of court. The performance of one's duties in a

perfunctory manner is never justified especially when reliance on employees of lower rank projects nothing else but gross inefficiency and incompetence.

3. ID.; ID.; ID.; ID.; DUTY TO DEPOSIT IMMEDIATELY ALL FIDUCIARY COLLECTIONS WITH AN AUTHORIZED GOVERNMENT DEPOSITORY BANK; OMISSION THEREOF CONSTITUTES GROSS NEGLECT OF DUTY.— Jurisprudence is replete with reminders to Clerks of Court for an effective performance of their collection and deposit functions. The 2002 Manual for Clerks of Court and countless SC circulars likewise serve as clear guideposts, to wit: All fiduciary collections shall be **deposited immediately** by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. In SC Circular 5-93, the Land Bank was designated as the authorized government depository. Court personnel tasked with collections of court funds, such as clerk of court and cash clerks, should **deposit immediately** with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. **Delayed remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of interest that may be earned if the amounts are deposited in a bank.**

4. ID.; ID.; ID.; ID.; ID.; LACK OR LIMITED KNOWLEDGE OF ACCOUNTING PROCEDURE DOES NOT EXONERATE THE CLERK OF COURT OF ADMINISTRATIVE LIABILITY; RATIONALE.— The Fiduciary Funds is composed of all collections from bail bonds, rental deposits and other fiduciary collections deposited with the Landbank. Just like any bank account, the Fiduciary Fund bank account earns interest. Generally, any increase of the account balance which is not a bail bond, rental deposit or other fiduciary collection is considered interest earned. Therefore, interest earned refers to interest income after deducting the withholding tax. Because of the withdrawal of the gross interest, the cash back-up for the bail bonds, rental deposits and other fiduciary collections still deposited with the court may not be enough to pay said deposits when the Court will order the release thereof. Atty. Lometillo's pretext of confusion over terms such as "net interest income" and "gross interest" and the supposed failure of the

Court to clarify this ambiguity, cannot work in her favor. Time and again, clerks of court have been reminded that "lack or limited knowledge of accounting procedures does not exonerate them. To credit such defense would set similarly situated employees to lightly discharge their duty of employing reasonable skill and diligence and thus evade administrative liability."

5. ID.; ID.; ID.; ID.; ID.; WHEN GUILTY OF NEGLIGENCE, INCOMPETENCE AND GROSS INEFFICIENCY IN THE PERFORMANCE OF OFFICIAL DUTY; PENALTY OF DISMISSAL, PROPER.— Atty. Lometillo had clearly failed to live up to the standards of competence and integrity expected of an officer of the court. Mediocrity is not at all fit for a member of a complement tasked to dispense justice. Her failure to exhibit administrative leadership and ability renders Atty. Lometillo guilty of negligence, incompetence and gross inefficiency in the performance of her official duty as Clerk of Court. Thus, the penalty of dismissal from service is proper considering her failure to exercise supervision over her administrative staff resulting in commission of Blatant infractions against the Rules. In view of Atty. Lometillo's compulsory retirement, however, the imposition of accessory penalties, including the forfeiture of her retirement benefits, is justified.

6. ID.; ID.; COURT PERSONNEL; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; CASE AT BAR.— As found after investigation, Patopaten failed to exercise her general functions and duties, as provided in the 2002 Manual for Clerks of Court. As the head of the Cash Division, Patopaten must have displayed heightened circumspection of the other employees' performance, specifically those of Castillo's and Guides' who were in-charge of collection of payment from litigants. Patopaten must have been vigilant in the performance of her duties, not only to clear herself from fault, but more importantly, to prevent misappropriation of judiciary funds. The same offense of simple neglect of duty was committed by Guides, Castillo and Licanero. Their individual pleas of innocence and blame-shifting are insufficient to cover up their shortcomings as shown by evidence. None of the three was able to offer a plausible explanation for the shortages, showing their indifference to

the oaths they took as public servants. Undoubtedly, the Court does not, and will never, tolerate carelessness and apathy, all for the sake of efficient administration of justice.

7. ID.; ID.; THE COURT SHOULD ACT TO RECOVER UNACCOUNTED SHORTAGES AND TO MINIMIZE, IF NOT TO ELIMINATE, IRREGULARITIES IN THE FUTURE.— The Court should act to recover the unaccounted shortages in the Clerk of Court General Fund (CCGF), the Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF), Sheriff's General Fund (SGF), and Fiduciary Fund (FF). For this purpose, the OCA should institute the necessary action against the persons responsible in our courts of law. And to minimize, if not eliminate, said irregularities in the future the OCA should expand the coverage of the check payment system in all cities and capital towns in the provinces.

APPEARANCES OF COUNSEL

Norberto J. Posecion for respondents.

Ilarde Penetrante Tungala & Associates for Lenny Gemma Castillo.

Honorato P. Sayno, Jr. for Victoria Patopaten.

D E C I S I O N

PER CURIAM:

This administrative matter originated from a financial audit conducted by the Office of the Court Administrator *(OCA)* on the books of accounts of the Office of the Clerk Court, Regional Trial Court, Iloilo City *(OCC)*, covering transactions from November 1993 to February 2004.

The audit was conducted in view of the compulsory retirement of former Clerk of Court, Atty. Magdalena L. Lometillo *(Atty. Lometillo)*, and the designation of Atty. Gerry D. Sumaclub *(Atty. Sumaclub)* as Officer-In-Charge, without the benefit of a formal turn-over of accountabilities.

The OCA Report

In OCA Memorandum dated November 24, 2008,[1] certain irregularities unearthed by the OCA Financial Audit Team were reported as follows:

a. Based on the Report of Collections presented and the inventory of unused Official Receipts *(Ors)*, the team was able to account only 102,869 of the 105,500 pieces released by the Property Division of the OCA. 102,126 pieces had been duly issued while 743 pieces were presented unused. The remaining 2,631 pieces were unaccounted for.

b. Per review of the books by the OCC audit team, the following accounts incurred shortages:

A) Clerk of Court General Fund (CCGF)

Collections (November 1, 1993 to November 10, 2003)	₱ 7,873,045.66
Less: Deposits/Remittances (November 1, 1993 to November 10, 2003)	8,244,234.01
Balance of Accountability/Over Remittance	₱ (371,188.35)

The balance of accountability is composed of the following:

Deposit Slips Without Machine Validation		**₱ 129,780.72**
Less: Net Effect of Over and Under Remittance	₱ 135.55	
Erroneous Remittance of-		
Fiduciary Fund Interest	455,114.14	
SAJF Collections	45,723.38	500,969.07
Grand Total		₱ (371,188.35)

B) Special Allowance for the Judiciary Fund (SAJF)

Collections (November 11, 2003 to February 28, 2004)	₱ 172,117.24
Less: Deposits/Remittances (November 11, 2003 to February 28, 2004	126,310.86
Balance of Accountability/ Over Remittance	₱ 45,806.38

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

The balance of accountability is composed of the following:

Shortage	
Erroneous Remittance of SAJF Collections to the CCGF	₱ 45,723.38
Undeposited Collections (Net Effect of Over and Under deposit of collections)	**405.00**
Total	₱ 46,128.38
Less: Erroneous Deposit of SGF Collections to The SAJF (12/12/03)	322.00
Total	₱ 45,806.38

C) Judiciary Development Fund (JDF)

Collections (November 1, 2003 to February 28, 2004)	₱ 82,873,662.38
Less: Deposits/Remittances (November 11, 2003 to February 28, 2004)	82,866,145.88
Balance of Accountability/ Shortage	₱ 7,516.50

The balance of accountability is composed of the following:

Shortage	
Undeposited Collections (Net Effect of Over and Under Deposit of Collections)	**₱ 205.00**
Collections for February, 2004 deposited March, 2004	7,311.50
Total	₱ 7,516.50

D) Sheriff's General Fund (SGF)

Collections (November 11, 1998 to November 28, 2003)	₱ 88,629.00
Less: Deposits/Remittances	88,245.00
Balance of Accountability	₱ 384.00

The balance of accountability is composed of the following:

Erroneous Deposit of SGF collections to the SAJF	322.00
Undeposited Collections	**62.00**
Total	₱ 384.00

E. Fiduciary Fund (FF)

Unreported Collections	₱ 866,105.96
Unauthorized Withdrawals	
Over/Double Withdrawals	30,000.00
Withdrawals Without Supporting Documents	784,795.00[2]
Forfeiture of PNB Account Balance	9957.46
Balance of Accountability	**₱1,690,858.42**

[2] See list, *id.* at 19.

c. With respect to the Fiduciary Fund *(FF)*, certain anomalies were discovered such as, late deposit of collections;[3] unreported collections, double and/or over withdrawals; withdrawals made sans supporting documents; and forfeiture by the Philippine National Bank *(PNB)* of the balance of the FF Account for being a dormant account. These irregularities caused a shortage of ₱1,690,858.42.

d. The audit team discovered cash bond collections that were intentionally unreported to the Court, amounting to ₱866,105.96, from December 21, 1998 to June 8, 2001. As it turned out, the cash used for the refund of unreported and undeposited cash bonds was taken from the deposit of the other cash bonds, consignation deposits and other FF collections still deposited with the Court. Hence, the cash back-up is understated.[4]

e. Unauthorized withdrawals were discovered, amounting to double withdrawals of ₱30,000.00.

f. Withdrawals of ₱182,000.00 from the Landbank of the Philippines *(Landbank)* account[5] and ₱602,795.00 from the PNB account[6] totaling ₱784,795.00, were considered unauthorized due to absence of documentation.

g. An account balance of ₱9,957.46 in a PNB account[7] was forfeited for being dormant.

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[3] In violation of Administrative Circular No. 3-2000 dated June 15, 2000 which provides that "collections must be deposited everyday or if depositing daily is not possible, deposit for the fund shall be at the end of every month, provided however, that every time collections for the fund reach ₱500.00, the same shall be deposited immediately before the period above indicated."

[4] *Rollo*, p. 6.

[5] *Id.* at 7, Fiduciary Fund LBP Current Account No. 731-515826-7.

[6] *Id.*, Fiduciary Fund PNB Savings Account 416-515826-7.

[7] *Id.* at 8, Fiduciary Fund PNB Account No. 416-515826-7.

h. The audit team observed that, often, only the last three digits of the number of the Official Receipt appear in the column for "OR" in the cashbooks. The team had to examine the triplicate copies of the Official Receipts in order to come up with the accurate finding.[8]

i. The existing internal control system in the handling of official receipts is vulnerable to abuse. As these were kept in an unlocked filing cabinet, it was not surprising that 14,631 pieces of official receipts were not properly accounted for.[9]

j. It appears that Atty. Lometillo failed to exercise the required degree of supervision over the personnel authorized to collect legal fees and the other functions related thereto.[10] Had Atty. Lometillo monitored/ supervised the members of her staff, the irregular practices, especially the resulting shortage of funds, should have been at least avoided.

Explanation of Atty. Lometillo

The above findings of the OCA Audit Team were refuted by Atty. Lometillo in her Explanation dated February 15, 2007.[11] She explained each finding of irregularity as follows:

Account and Turnover of Official Receipts—

Atty. Lometillo attributed the missing official receipts to the disposal and burning of rotting and termite-infested court records by the Records Section of the OCC on April 27, 1992 and on May 26, 2001.[12] According to her, some boxes may have contained some of the old receipts up to year 2000 [and] the Records Officer did not bother to list these down and she simply directed the aides and janitors to take them out of the

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[8] *Id.* at 8.

[9] *Id.*

[10] *Id.* at 14, OCA Audit Team Report.

[11] *Id.* at 55-59.

[12] Pursuant to Administrative Order No. 13 dated April 29, 1981.

Records Room and place them in a vacant space under the stairs to wait for the burning thereof.[13]

As to the Fiduciary Funds Vouchers (withdrawals and collections), Atty. Lometillo also echoes the view of one of her staff that all vouchers were included in the bundles which the Audit Team took for inspection.

Shortages—

Atty. Lometillo generally denied knowledge of any shortage in the unreported collections in the SAJF, JDF and SGF amounting to ₱405.00, ₱684.51 and ₱62.00, respectively. Anent the FF, Atty. Lometillo explained that she was not aware of unreported collections amounting to ₱866,105.96, prior to the recent audit. She claimed to have been cleared from accountabilities by the Supreme Court Audit Team and by the local COA after audit was conducted on October 25, 1993.[14] She instead shifted blame to the Administrative Section of the OCC headed by Cashier II Victoria Patopaten *(Patopaten)*, who was responsible for, among others, "making physical deposits and withdrawals of cash, receiving collection of cash clerks and consolidating daily collection reports, verifying cash balance of receiving cash clerks by comparing cash on hand with book balances, preparing daily cash position reports and other monthly reports of collections and disbursements."[15]

Atty. Lometillo further emphasized that in Memorandum 92-2 dated May 25, 1992, she specifically assigned Patopaten "to perform such functions as are necessary in the collection and remittance of all money paid to the Clerk of Court. In another Memorandum on December 20, 2000, Atty. Lometillo directed Patopaten to issue receipts and receive money from litigants and depositors; to check monthly reports and entries in the books of accounts from time to time; and to remit to the

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[13] *Id.* at 58.

[14] *Id.* at 61-91, as appearing in the Report of Cash Examination and Certificate of Settlement and Balances (CSB) annexed to Atty. Lometillo's Explanation.

[15] *Id.* at 56.

undersigned all collections at the end of the day.[16] Other administrative functions such as bookkeeping, preparation of deposit slips, monthly reports, vouchers and checks for withdrawal of deposits were delegated to other employees, namely: Administrative Officer I Linda Guides *(Guides)*, Clerk III Leny Gemma Castillo *(Castillo)*, and Clerk III Brenda Linacero *(Linacero)*. Of the employees mentioned by Atty. Lometillo, only Linacero rendered an explanation, stating that "she only received fees and issued receipts when the other two clerks, who were charged with the function of collection were absent or out of the office as requested by Ms. Patopaten.[17]

Atty. Lometillo refused to pay and deposit the shortages in the SAJF, JDF, SGF and FF because (1) she did not collect them herself, having delegated the task to Patopaten; (2) she had not been aware that there were collections that had not been deposited because when the collection would be remitted to her at the end of office hours, she would always compare the amount collected with the receipts issued and they always tallied; and (3) she had complete trust in the cashier and the collecting clerks and never thought that they would not report any collection, if indeed, they did not.[18]

Over/Double Withdrawals amounting to ₱30,000.00—

With respect to the finding of double withdrawals, Atty. Lometillo speculated that the procedure of "partial withdrawal"[19] adhered to by the office could have caused the errors. She likewise echoed Licanero's allegations that no over withdrawals could have been possible because the vouchers went through several offices and signatories, including the Executive Judge.

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[16] *Id.*

[17] *Id.* at 318.

[18] *Id.* at 59.

[19] *Id.* at 56. "If the deposit is say ₱20,000.00 and the depositor is authorized to withdraw ₱10,000.00 only, we withdrew the whole amount of ₱20,000.00 and then we re-deposited the balance of ₱10,000.00. Since we could not do this without court order, we usually ask the judge concerned to change the order authorizing us to release ₱20,000.00 and to re-deposit the ₱10,000.00 balance. The error may have been committed here."

Overwithdrawal of Interest Income from the FF amounting to ₱455,114.14—

On the theory that SC Circular No. 50-95 only mentioned the terms "interest income," Atty. Lometillo said that she opted to withdraw the gross interest income from the FF instead of the net interest income. In her own words, Atty. Lometillo reasoned that "the circular mentions only interest income. It does not mention net interest income which the SC audit team insisted should have been the amount remitted to the National Treasury. The audit team, in fact, mentioned that many clerks of court had committed the same mistake and yet the Supreme Court did not issue clarificatory statements or circular to correct this ambiguity."[20] Request for refunds from the Bureau of Treasury were already been submitted.

Unauthorized Withdrawals Without Supporting Documents amounting to ₱784,795.00—[21]

Atty. Lometillo surmised that withdrawals pertaining to checks had been made for consignation deposits considering that the names of the payees did not appear in the index of cases in the Office of the Clerk of Court. She insisted that all withdrawals from the FF were duly supported with court orders except those of consignation deposits and financial assistance from the Provincial Government of Iloilo for traveling expenses of employees.

Forfeiture of PNB account balance ₱9,957.46 for being a dormant account—

Atty. Lometillo insisted that there was an agreement with the depository bank, that the account would not be closed until the cash bond was completely withdrawn. She explained that after all the unused checks were returned to the bank, "the account was virtually forgotten."[22]

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[20] *Id.* at 57.

[21] *Id.*

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

Violation of Administrative Circular No. 3-2000 dated June 15, 2000—

Atty. Lometillo claimed that deposits were picked up by bank representatives thrice a week, every Monday, Wednesday and Friday.[23] When the day would fall on a holiday, the bank representative would be at the court the next working day. She theorized that the office's former practice of encashing postdated checks of employees might have been the cause of delay. This prompted her to issue Office Memorandum No. 97-03[24] directing the staff "not to change bank drafts, money orders, and/or other kinds of checks with, or from, the money in your collection to prevent overages in your deposits."[25]

Deposit Slips of the GF and JDF without Machine Validation—

The OCC entered into an arrangement with the local branch of the Landbank, where bank representatives were supposed to return validated deposit slips on "the next pick-up day." "When the Landbank picked up the deposits, its *[sic]* personnel thereof did not take along the validating machine. They did the validating in the Landbank office when they returned there and took them back the following collection day."[26] Atty. Lometillo admitted that, at times, bank representatives would fail to bring the slips, and the probability that Patopaten forgot to remind them, was not remote.[27]

Explanation of other Respondents

In compliance with the above resolution of the Court, the other respondents submitted their respective Explanation denying participation in the anomalies uncovered by the audit team.[28]

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[23] *Id.* at 56.

[24] *Id.* at 54.

[25] *Id.* at 58.

[26] *Id.*

[27] *Id.* at 13.

[28] Explanation of Castillo, *id.* at 274-275; Explanation of Licanero, *id.* at 276; Explanation of Guides, *id.* at 278-287; Explanation of Patopaten, *id.* at 289-291.

Patopaten averred that her position as Cashier II did not entail custody over the unaccounted receipts discovered by the audit team, as it was not her official task to accept payments from litigants and to issue receipts therefor. Her only responsibility was to receive remittance of collections from Castillo and Guides, and to see to it that the remitted amount tallied with the receipts issued. Patopaten issued receipts only when requested by Atty. Lometillo, or when Castillo and Guides were not around. She claimed that without a direct hand on collections, she had no knowledge of how the shortages came about. She likewise had no way of noticing, much less determining, the unreported collections on the part of her co-employees.

Licanero, on the other hand, explained that double withdrawals could not have possibly occurred because the vouchers she had prepared were scrutinized not just by Atty. Lometillo, but also by the Clerk of Court of the Executive Judge and the Executive Judge himself. Like Patopaten, she issued receipts only when Castillo and Guides were not around, and that she religiously remitted her collections to Atty. Lometillo on these occasions.

For her part, Castillo asserted diligence in turning over her collections to Atty. Lometillo and Patopaten, whom she claimed to be strict in going over the issued receipts. Guides, in turn, alleged that she was obliged by Atty. Lometillo to prepare the monthly reports of regular collections, under the direct supervision of Patopaten. Despite lack of bond, she was constrained to perform actual collection in the absence of Castillo, who was often designated as an "acting cashier," in the absence of Patopaten. She denied any malfeasance or misfeasance during her short stint as a cash clerk.

Recommendation of the OCA

In the Resolution[29] dated March 31, 2009, the Court adopted the recommendation of the OCA as follows:

1. This report be DOCKETED as a regular complaint against Atty. Magdalena L. Lometillo for violation of the 2002

[29] *Id.* at 265-269.

Revised Manual for Clerks of Courts, Circular No. 50-95 dated October 11, 1995, Administrative Circular No. 3-2000 dated June 15, 2000 and OCA Circular No. 22-94 dated April 8, 1994 for: x x x

a. Initial shortages incurred in the Clerk of Court General Fund (CCGF), Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF), Sheriff General Fund (SGF) and the Fiduciary Fund in the amount of ₱129,780.72, ₱405.00, ₱205.00, ₱62.00 and ₱1,690,858.42 respectively x x x;

x x x x x x x x x

2. Writ of Preliminary Attachment be ISSUED as security for the satisfaction of the shortages incurred x x x;

3. Retirement benefits of Atty. Magdalena L. Lometillo be FORFEITED and be APPLIED to the shortages incurred x x x;

4. For the purpose of appropriating the proceeds of retirement benefits of Atty. Magdalena L. Lometillo in order to refund/pay the shortages incurred x x x;

4.1 Employees Welfare and Benefits Division, OAS, OCA be DIRECTED to process the Application for Clearance of Atty. Magdalena Lometillo;

4.2 Financial Management Office, OCA be DIRECTED to process the terminal leave pay of Atty. Magdalena Lometillo dispensing with the usual documentary requirements and apply the same to the shortages x x x;

4.3 Government Service Insurance System be ORDERED to pay the Proceeds of the Retirement Benefits of Atty. Magdalena Lometillo in favor of the Supreme Court for the settlement of Atty. Lometillo's financial accountabilities

x x x x x x x x x

5. Hon. Antonio M. Natino, Executive Judge, RTC, Iloilo (City) be DIRECTED to CONDUCT an investigation and SUBMIT a report and recommendation thereon within thirty (30) days from notice on the violations committed resulting to [the] misappropriation of judiciary funds by Atty. Magdalena L. Lometillo x x x.

Findings and Recommendation of Investigating Judge

After the investigation, Executive Judge Antonio M. Natino *(Judge Natino)* submitted his findings and recommendations to the OCA. In his first report, Judge Natino recommended a penalty of suspension of one (1) month and one (1) day with a stern warning against Patopaten, who was found guilty of Simple Neglect of Duty, as she clearly failed to give attention to a task expected of a court employee, to wit:

> Had she performed the functions and duties of Cashier II, or as she claimed to be, that Lenny Gemma Castillo and Linda Guides are designated to act as such xxx she could have checked the records such that these anomalies could have been avoided. Being the Cashier II, and granting there are issuing clerks, it is her obligation to safeguard the issuance of Official Receipts and the receipt of money as well."[30]

In the continuation of his report dated March 3, 2010, Judge Natino made the following findings:

a) The unreported collections found by the OCA audit team are reflected in the series of official receipts that were found as "unaccounted for." In effect, the missing 2,631 receipts, as found by the OCA audit team come from different branches of the Court. In other words, the loss of 2,631 pieces of receipts was made intentionally.

b) Guides, who had the highest number of issuance of unaccounted receipts, presented machine copies of her remittances. Upon examination, however, the machine copies do not show proof of remittance of the amounts to Castillo.

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[30] Report and Recommendation of Judge Natino, dated January 20, 2010.

c) Guides admitted that, together with Linacero and Castillo, she handled the issuance of receipts and actual collection for the Fiduciary Fund.

d) If each of the respondents had properly carried out their duties and responsibilities, especially Guides who prepared monthly reports, irregularities could have been detected early.

Guides, Castillo and Linacero were all found guilty of Simple Neglect of Duty and were recommended to be meted out a penalty of suspension of six (6) months in accordance to Section 22, Rule XIV of the Omnibus Civil Service Rules and Regulations.

The Court's Ruling

No less than the Constitution mandates that "public office is a public trust." In a long line of cases, the Court has untiringly reminded employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Whether committed by the highest official or by the lowest member of the workforce, any act of impropriety can seriously erode the people's confidence in the judiciary.[31] Thus, the Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary.[32] Service with loyalty, integrity and efficiency is required of all public officers and employees, who must, at all times, be accountable to the people.

One such officer is the Clerk of Court, whose "administrative functions are vital to the prompt and sound administration of justice."[33] Next to the judge, the clerk of court is the chief

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[31] *Office of the Court Administrator v. Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar, Clerk of Court and Clerk IV, respectively, both of the RTC of San Mateo, Rizal,* A.M. No. P-05-1935, April 23, 2010.

[32] *Mendoza v. Mabutas,* A.M. No. MTJ-88-142, June 17, 1993, 223 SCRA 411.

[33] *Escañan v. Monterola II*, 404 Phil. 32, 39 (2001).

administrative officer charged with preserving the integrity of court proceedings. A number of non-judicial concerns connected with trial and adjudication of cases is handled by the clerk of court, demanding a dynamic performance of duties, with the prompt and proper administration of justice as the constant objective. The nature of the work and of the office mandates that the clerk of court be an individual of competence, honesty and integrity.[34] The Clerks of Court perform a very delicate function as custodian of the court's funds, revenues, records, property and premises.[35] They wear many hats – those of treasurer, accountant, guard and physical plant manager of the court, hence, they are "entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds"[36] and are thus, "liable for any loss, shortage, destruction or impairment of such funds and property."[37]

In this case, it appears that Atty. Lometillo utterly failed to perform her duties with the degree of diligence and competence expected of a clerk of court. The performance of one's duties in a perfunctory manner is never justified especially when reliance on employees of lower rank projects nothing else but gross inefficiency and incompetence.

First. Atty. Lometillo's convenient excuse for the missing copies of Official Receipt shows her blatant disregard for her responsibilities. She was unsure of whether the official receipts were placed in the boxes of records eaten by termites or were in the state of decomposition. Instead of presenting proof that she had taken steps to minimize the risk of losses, she conveniently passed on the blame, ignoring her serious lapses in the handling of the receipts. Atty. Lometillo was tasked by the 2002 Revised Manual for Clerks of Court to store or keep unused receipts in an

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[34] *Office of the Court Administrator v. Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar, Clerk of Court and Clerk IV, respectively, both of the RTC of San Mateo, Rizal, supra* note 31.

[35] *OCA v. Orbigo-Marcelo*, 416 Phil. 356, 364 (2001).

[36] *OCA v. Roque,* A.M No. P-06-2200, February 4, 2009, 578 SCRA 21, 26.

[37] *Id.*

unlocked filing cabinet in the staff room of her office. Obviously, these safety measures were not undertaken. Atty. Lometillo eventually had to resort to empty surmises and guesswork when asked to explain about thousands of unaccounted official receipts. It was indeed unfortunate that a display of inefficiency like this could cause the judiciary so much without discounting the possibility of more unreported FF collections, and even unreported collection of legal fees.

Second. Jurisprudence is replete with reminders to Clerks of Court for an effective performance of their collection and deposit functions. The 2002 Manual for Clerks of Court and countless SC circulars likewise serve as clear guideposts, to wit:

> All fiduciary collections shall be **deposited immediately** by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. In SC Circular 5-93, the Land Bank was designated as the authorized government depository. Court personnel tasked with collections of court funds, such as clerk of court and cash clerks, should **deposit immediately** with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. **Delayed remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of interest that may be earned if the amounts are deposited in a bank.** In the same vein, clerks of court are required by SC Circular 13-92 to withdraw interest earned on deposits, and to remit the same to the account of the Judiciary Development Fund (JDF) within two (2) weeks after the end of each quarter.[38] [Emphases supplied]

In the same vein, Administrative Circular No. 3-2000, dated June 15, 2000, is emphatic in its command: "collections must be deposited everyday or if depositing daily is not possible, deposit for the fund shall be at the end of every month, provided however, that every time collections for the fund reach ₱500.00, the same shall be deposited immediately before the period above indicated."

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[38] *Office of the Court Administrator v. Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar, Clerk of Court and Clerk IV, respectively, both of the RTC of San Mateo, Rizal, supra* note 31.

Here, Atty. Lometillo's performance was clearly wanting. The late deposit of collections, as found by the audit team, cannot be countenanced. The Court agrees with the OCA that Atty. Lometillo did not exert all available means to comply with the above directives, like negotiating with the depositary bank for an everyday pick-up service or requesting for police back-up in transporting deposits to the bank.[39]

Surely, no amount of convenience or expediency can justify Atty. Lometillo's excuse from making arrangements with the bank for a pick-up service, thrice a week. The rules are plain enough to command strict compliance. Atty. Lometillo's 42-year stint in office provides the Court a reasonable expectation that she was aware of the consequences that "delay in the remittances of collections constitutes neglect of duty."[40] Surely, her long service to the judiciary must have made her realize the effect of delayed deposit of collections: that the court is deprived of the interest that may be earned if the amounts are deposited in a bank.

Indeed, Atty. Lometillo should have imbibed her primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. "Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds."[41]

With more reason, the office's old practice of encashing postdated checks of employees is unacceptable, regardless of Atty. Lometillo's office memorandum which was issued later to prohibit the same. This merely shows dangerous laxity in her style of supervision over the staff.

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[39] *Rollo*, p. 17.

[40] *In-House Financial Audit, Conducted on the Books of Accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao Del Sur,* A.M. No. P-06-2121, June 26, 2008, 555 SCRA 417, 423.

[41] *OCA v. Atty. Mary Ann Paduganan-Penaranda, Office of the Clerk of Court, Municipal Trial Court in Cities (MTCC) Cagayan de Oro, Misamis Oriental and Ms. Jocelyn Meidante,* A.M. No. P-07-2355, March 19, 2010.

Third. Anent the forfeiture of PNB account balance of ₱9,957.46 for being a dormant account, the reasoning of the OCA is well-taken. The situation should have been avoided had Atty. Lometillo closed the account as required in Circular No. 50-95 dated October 11, 1995 and transferred the same to the Landbank, which is the authorized depository bank for the FF.[42] As much as the forfeited amount was not as considerable compared to the other amounts of shortages found by the audit team, this display of indifference pains the entire Judiciary.

Fourth. The explanation of Atty. Lometillo on the over withdrawal of interest income from the FF amounting to ₱455,114.14, likewise deserves scant consideration.

The Fiduciary Funds is composed of all collections from bail bonds, rental deposits and other fiduciary collections deposited with the Landbank. Just like any bank account, the Fiduciary Fund bank account earns interest. Generally, any increase of the account balance which is not a bail bond, rental deposit or other fiduciary collection is considered interest earned. Therefore, interest earned refers to interest income after deducting the withholding tax. Because of the withdrawal of the gross interest, the cash back-up for the bail bonds, rental deposits and other fiduciary collections still deposited with the court may not be enough to pay said deposits when the Court will order the release thereof.[43]

Atty. Lometillo's pretext of confusion over terms such as "net interest income" and "gross interest" and the supposed failure of the Court to clarify this ambiguity, cannot work in her favor. Time and again, clerks of court have been reminded that "lack or limited knowledge of accounting procedures does not exonerate them. To credit such defense would set similarly situated employees to lightly discharge their duty of employing reasonable skill and diligence and thus evade administrative liability."[44]

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[42] *Rollo*, p. 16.

[43] *Id.*

[44] *Supra* note 36.

Fifth. The OCA correctly refused the deduction of withdrawals without supporting documents from Atty. Lometillo's accountabilities with respect to the Fiduciary Fund. The amount of ₱784,795.00 should be accounted for by Atty. Lometillo, with withdrawal slips signed by the Executive Judge and countersigned by the Clerk of Court, or with a lawful order from the Court that has jurisdiction over the subject matter involved.[45] Further, the original official receipt and a copy of the acknowledgment receipt are required. Without said requirements, Atty. Lometillo's claims that these were withdrawals of financial assistance from the Provincial Government of Iloilo for traveling expenses of employees, or consignation deposits, cannot stand. She never presented correct disbursement vouchers with attachments in the first place, further bolstering her ineptitude as the designated custodian of court funds.

The same applies with deposit slips of ₱3,788,269.12 and ₱6,253,484.79 to the General Fund and Judiciary Fund, respectively. These were rightly ignored by the OCA for lack of machine validation, a condition which certainly may not be excused by Atty. Lometillo's and her staff's failing memory.

Sixth. Atty. Lometillo "can not pass the blame for the shortages incurred to his/her subordinates who perform the task of handling, depositing, and recording of cash and check deposits xxx" for it is "incumbent upon the Clerk of Court to ensure his/her subordinates are performing his/her duties and responsibilities in accordance with the circulars on deposits and collections to ensure that all court funds are properly accounted for."[46]

It is evident in her Explanation that Atty. Lometillo preferred to shift responsibility over fund shortages to her administrative staff. With exoneration in mind, she desperately tried to convince the Court that she did everything possible to come up with a competent flow of functions in her office, but to no avail. Atty.

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[45] Circular No. 50-95 dated October 11, 1995.

[46] *Office of the Court Administrator v. Bernardino*, A.M. No. P-97-1258, January 31, 2009, 450 SCRA 89, 116.

Lometillo, in fact, designated the other respondents to functions which she herself should have performed, or at least closely monitored, she was unmindful of her duty "to **personally** attend to the collection of the fees, the safekeeping of the money thus collected, the making of the proper entries thereof in the corresponding book of accounts, and the deposit of the same in the offices concerned."[47]

Her so-called office memoranda, apprising her co-employees of their tasks in handling the finances of the Court can only provide as much leverage in her favor, but surely, absolution for the fund shortages which ballooned over time, is not forthcoming.

In the recent case of *OCA v. Penaranda and Mediante*,[48] a Clerk of Court delegated the handling of the financial matters of the court to her "trustworthy" cashier including actual possession of court collections and issuance of receipts. Like Atty. Lometillo, the Clerk of Court claimed that "she signs the deposit slips every day, but whether or not all collections were actually deposited, she was unaware." The Court had this to say:

> While Peñaranda was not the custodian of the court's collection and she, instead, delegated said function to Mediante, still, **the expectation that she would perform all the duties and responsibilities of a Clerk of Court is not diminished**. Indeed, the fact that Mediante was the one tasked to deposit the court collections does not absolve Peñaranda from liability, since the duty to remit court collections remains with her as the clerk of court, albeit, in this case, she was supposed to monitor that the same was being carried out.
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> x x x Both have been remiss in their duty to remit the collections within a prescribed period and are liable for keeping funds in their custody – Peñaranda as the one responsible for monitoring the court's financial transactions and Mediante as the one in whom such functions are reposed. Undoubtedly, Peñaranda and Mediante

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[47] *Office of the Court Administrator v. Atty. Jose R. Bawalan, Clerk of Court, Regional Trial Court, Branch 23, Trece Martires City*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408.

[48] A.M. No. P-07-2355, March 19, 2010.

violated the trust reposed in them as disbursement officers of the judiciary. Thus, they should be held liable for the shortages mentioned above. [Emphasis supplied]

x x x x x x x x x

Based on the foregoing findings, Atty. Lometillo had clearly failed to live up to the standards of competence and integrity expected of an officer of the court. Mediocrity is not at all fit for a member of a complement tasked to dispense justice. Her failure to exhibit administrative leadership and ability renders Atty. Lometillo guilty of negligence, incompetence and gross inefficiency in the performance of her official duty as Clerk of Court. Thus, the penalty of dismissal from service is proper considering her failure to exercise supervision over her administrative staff resulting in commission of blatant infractions against the Rules. In view of Atty. Lometillo's compulsory retirement, however, the imposition of accessory penalties, including the forfeiture of her retirement benefits, is justified.

With respect to the other respondents, the Court agrees with the recommendation of Judge Natino but with a modification of the penalty.

As found after investigation, Patopaten failed to exercise her general functions and duties,[49] as provided in the 2002 Manual for Clerks of Court. As the head of the Cash Division, Patopaten must have displayed heightened circumspection of the other employees' performance, specifically those of Castillo's and

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[49] 1) make physical deposit and withdrawals of cash as may be authorized by the Clerk of Court;

2) receives collection of cash clerks and consolidate daily collection reports;

3) prepares statements of cash accountability;

4) verifies cash balance of lower grade receiving cashiers by comparing cash on hand with book balance;

5) verifies the posting of cash advances, disbursement, collections and deposits;

6) prepares daily cash position reports and other monthly reports of collections and disbursements; and

7) does related work.

Guides' who were in-charge of collection of payment from litigants. Patopaten must have been vigilant in the performance of her duties, not only to clear herself from fault, but more importantly, to prevent misappropriation of judiciary funds.

The same offense of simple neglect of duty was committed by Guides, Castillo and Licanero. Their individual pleas of innocence and blame-shifting are insufficient to cover up their shortcomings as shown by evidence. None of the three was able to offer a plausible explanation for the shortages, showing their indifference to the oaths they took as public servants. Undoubtedly, the Court does not, and will never, tolerate carelessness and apathy, all for the sake of efficient administration of justice.

The matter of these irregularities should not end with this disposition. The Court should act to recover the unaccounted shortages in the Clerk of Court General Fund (CCGF), the Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF), Sheriff's General Fund (SGF), and Fiduciary Fund (FF). For this purpose, the OCA should institute the necessary action against the persons responsible in our courts of law.

And to minimize, if not eliminate, said irregularities in the future the OCA should expand the coverage of the check payment system in all cities and capital towns in the provinces.

WHEREFORE, judgment is hereby rendered as follows:

(1) Atty. Magdalena L. Lometillo, former Clerk of Court, Regional Trial Court, Iloilo City is hereby found *GUILTY* of gross inefficiency and gross neglect of duty. Her retirement benefits, except her terminal leave pay, are ordered *FORFEITED*. Further, she is *DISQUALIFIED* from re-employment in any branch or instrumentality in the government, including government-owned and controlled corporations.

(2) Cashier II Victoria S. Patopaten, Administrative Officer I Linda C. Guides, Clerk III Leny Gemma P. Castillo, and Clerk III Brenda M. Linacero are hereby found

GUILTY of Simple Neglect of Duty. They are ordered *SUSPENDED* from office for three (3) months effective immediately upon their receipt of this decision. They are likewise *STERNLY WARNED* that a repetition of the same or similar offense shall be dealt with more severely.

(3) Executive Judge Antonio M. Natino is *DIRECTED* to *CLOSELY MONITOR* the financial transactions of his court and to *STUDY* and *IMPLEMENT* procedures that would strengthen internal control over financial transactions.

(4) The Office of the Court Administrator is hereby ordered to institute the necessary actions against the persons responsible in our courts of law for the recovery of the unaccounted shortages in the Clerk of Court General Fund (CCGF), the Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF), Sheriff's General Fund (SGF), and Fiduciary Fund (FF).

(5) The Office of the Court Administrator is hereby ordered to expand the coverage of the check payment system in all cities and capital towns in the provinces.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, and *Sereno, JJ.,* concur.

Perez, J., no part.

EN BANC

[G.R. No. 191560. March 29, 2011]

HON. LUIS MARIO M. GENERAL, Commissioner, National Police Commission, *petitioner, vs.* **HON. ALEJANDRO S. URRO, in his capacity as the new appointee vice herein petitioner HON. LUIS MARIO M. GENERAL, National Police Commission,** *respondent.*

HON. LUIS MARIO M. GENERAL, Commissioner, National Police Commission, *petitioner, vs.* **President GLORIA MACAPAGAL-ARROYO, thru Executive Secretary LEANDRO MENDOZA, in Her capacity as the appointing power, HON. RONALDO V. PUNO, in His capacity as Secretary of the Department of Interior and Local Government and as *Ex-Officio* Chairman of the National Police Commission and HON. EDUARDO U. ESCUETA, ALEJANDRO S. URRO, and HON. CONSTANCIA P. DE GUZMAN as the midnight appointees,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; REQUISITES.— When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.

2. ID.; ID.; ID.; ID.; *LIS MOTA*; CONSTRUED.— *Lis mota* literally means "the cause of the suit or action." This last requisite of judicial review is simply an offshoot of the presumption of validity accorded the executive and legislative acts of our co-equal branches of the government. Ultimately, it is rooted in the principle of separation of powers. Given the presumed

validity of an executive act, the petitioner who claims otherwise has the burden of showing first that the case cannot be resolved unless the constitutional question he raised is determined by the Court.

3. ID.; ADMINISTRATIVE LAW; APPOINTMENT, CLASSIFIED; DISTINCTION, EXPLAINED.— Appointments may be classified into two: *first*, as to its nature; and *second*, as to the manner in which it is made. Under the **first classification,** appointments can either be permanent *or* temporary (acting). A basic distinction is that a permanent appointee can only be removed from office for cause; whereas a temporary appointee can be removed even without hearing or cause. Under the **second classification,** an appointment can either be regular *or ad interim*. A regular appointment is one made while Congress is in session, while an *ad interim* appointment is one issued during the recess of Congress. In strict terms, presidential appointments that require no confirmation from the Commission on Appointments cannot be properly characterized as either a regular or an *ad interim* appointment.

4. ID.; EXECUTIVE DEPARTMENT; PRESIDENT; POWER TO APPOINT; GENERALLY THE POWER TO APPOINT INCLUDES POWER TO MAKE TEMPORARY APPOINTMENT; *RATIONALE*.— Generally, the power to appoint vested in the President includes the power to make temporary appointments, **unless he is *otherwise specifically* prohibited by the Constitution or by the law, or where an acting appointment is repugnant to the nature of the office involved**. The President's power to issue an acting appointment is particularly authorized by the Administrative Code of 1987 (Executive Order No. 292). x x x The purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge those functions pending the selection of a permanent or another appointee. An acting appointee accepts the position on the condition that he shall surrender the office once he is called to do so by the appointing authority. Therefore, his term of office is not fixed but endures at the pleasure of the appointing authority. His separation from the service does not import removal but merely the expiration of his term — a mode of termination of official relations that falls outside the coverage of the constitutional provision on security of tenure since

no removal from office is involved. The power to appoint is essentially executive in nature and the limitations on or qualifications in the exercise of this power are strictly construed. x x x Generally, the purpose for staggering the term of office is to *minimize* the appointing authority's opportunity to appoint a majority of the members of a collegial body. It also intended to ensure the continuity of the body and its policies. A staggered term of office, however, is not a statutory prohibition, direct or indirect, against the issuance of acting or temporary appointment. It does not negate the authority to issue acting or temporary appointments that the Administrative Code grants. *Ramon P. Binamira v. Peter D. Garrucho, Jr.,* involving the Philippine Tourism Authority (*PTA*), is an example of how this Court has recognized the validity of temporary appointments in vacancies in offices whose holders are appointed on staggered basis. Under Presidential Decree (*P.D.*) No. 189, (the charter of the PTA, as amended by P.D. No. 564 and P.D. No. 1400 the members of the PTA's governing body are all presidential appointees whose terms of office are also staggered. This, notwithstanding, the Court sustained the temporary character of the appointment extended by the President in favor of the PTA General Manager, even if the law also fixes his term of office at six years unless sooner removed for cause. Interestingly, even a staggered term of office does not ensure that at no instance will the appointing authority appoint all the members of a body whose members are appointed on staggered basis.

5. ID.; ID.; ID.; ID.; LIMITATIONS ON THE TEMPORARY APPOINTMENT; SUSTAINED.— Given the wide latitude of the President's appointing authority (and the strict construction against any limitation on or qualification of this power), the prohibition on the President from issuing an acting appointment must either be specific, or there must be a clear repugnancy between the nature of the office and the temporary appointment. No such limitation on the President's appointing power appears to be clearly deducible from the text of R.A. No. 6975 in the manner we ruled in *Nacionalista Party v. Bautista*. In that case, we nullified the acting appointment issued by the President to fill the office of a Commissioner of the Commission on Elections (*COMELEC*) on the ground that it would *undermine the independence* of the COMELEC. We ruled that given the

specific nature of the functions performed by COMELEC Commissioners, only a permanent appointment to the office of a COMELEC Commissioner can be made.

6. ID.; R.A. NO. 6975 (DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT ACT OF 1990); CREATED THEREIN THE NATIONAL POLICE COMMISSION (NAPOLCOM); POWERS AND FUNCTIONS.— Under the Constitution, the State is mandated to establish and maintain a police force to be administered and controlled by a national police commission. Pursuant to this constitutional mandate, the Congress enacted R.A. No. 6975, creating the NAPOLCOM with its powers and functions x x x. We find nothing in this enumeration of functions of the members of the NAPOLCOM that would be subverted or defeated by the President's appointment of an acting NAPOLCOM Commissioner pending the selection and qualification of a permanent appointee. Viewed as an institution, a survey of pertinent laws and executive issuances will show that the NAPOLCOM has always remained as an office under or within the Executive Department. Clearly, there is nothing repugnant between the petitioner's acting appointment, on one hand, and the nature of the functions of the NAPOLCOM Commissioners or of the NAPOLCOM as an institution, on the other.

7. ID.; ID.; ID.; NO PROHIBITION AGAINST APPOINTMENT OF ACTING COMMISSIONER; APPLICATION IN CASE AT BAR.— By using the word "only" in Section 18 of R.A. No. 6975, the law's obvious intent is only to prevent the new appointee from serving *beyond* the term of office of the original appointee. It does not prohibit the new appointee from serving *less* than the unexpired portion of the term as in the case of a temporary appointment. While the Court previously inquired into the true nature of a supposed acting appointment for the purpose of determining whether the appointing power is *abusing* the principle of temporary appointment, the petitioner has not pointed to any circumstance/s which would warrant a second look into and the invalidation of the temporary nature of his appointment. x x x In the present case, the petitioner does not even allege that his separation from the office amounted to an abuse of his temporary appointment that would entitle him to the incidental benefit of reinstatement. As we did in *Pangilinan*, we point out that the petitioner's appointment as Acting

Commissioner was time-limited. His appointment *ipso facto* expired on July 21, 2009 when it was not renewed either in an acting or a permanent capacity. With an expired appointment, he technically now occupies no position on which to anchor his *quo warranto* petition.

8. ID.; ID.; ID.; ID.; A PERSON WHO ACCEPTS APPOINTMENT IN AN ACTING CAPACITY IS ESTOPPED FROM CLAIMING THAT HE WAS PERMANENTLY APPOINTED. — [T]he additional circumstance of estoppel clearly militates against the petitioner. A person who accepts an appointment in an acting capacity, extended and received without any protest or reservation, and who acts by virtue of that appointment for a considerable time, cannot later on be heard to say that the appointment was really a permanent one so that he could not be removed except for cause.

9. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; CONSTRUED.— The Rules of Court requires that an *ordinary* civil action must be based on a cause of action, which is defined as an act or omission of one party in violation of the legal right of the other which causes the latter injury. While a *quo warranto* is a *special* civil action, the existence of a cause of action is not any less required since both special and ordinary civil actions are governed by the rules on ordinary civil actions subject only to the rules prescribed specifically for a particular special civil action.

10. ID.; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; DEFINED; PROPER PARTY TO FILE; NOT PRESENT IN CASE AT BAR.— *Quo warranto* is a remedy to try disputes with respect to the title to a public office. Generally, *quo warranto* proceedings are commenced by the Government as the proper party-plaintiff. However, under Section 5, Rule 66 of the Rules of Court, an individual may commence such action if he claims to be entitled to the public office allegedly usurped by another. We stress that the person instituting the *quo warranto* proceedings in his own behalf must show that he is entitled to the office in dispute; otherwise, the action may be dismissed at any stage. Emphatically, Section 6, Rule 66 of the same Rules requires the petitioner to state in the petition his right to the public office and the respondent's unlawful possession of the disputed position. As early as 1905, the Court already

held that for a petition for *quo warranto* to be successful, the suing private individual must show a clear right to the contested office. His failure to establish this right warrants the dismissal of the suit for lack of cause of action; it is not even necessary to pass upon the right of the defendant who, by virtue of his appointment, continues in the undisturbed possession of his office. Since the petitioner merely holds an acting appointment (and an expired one at that), he clearly does not have a cause of action to maintain the present petition. The essence of an acting appointment is its temporariness and its consequent revocability at any time by the appointing authority. The petitioner in a *quo warranto* proceeding who seeks reinstatement to an office, on the ground of usurpation or illegal deprivation, must prove his clear right to the office for his suit to succeed; otherwise, his petition must fail. From this perspective, the petitioner must first clearly establish his *own* right to the disputed office as a condition precedent to the consideration of the unconstitutionality of the respondents' appointments. The petitioner's failure in this regard renders a ruling on the constitutional issues raised completely unnecessary. Neither do we need to pass upon the validity of the respondents' appointment. These latter issues can be determined more appropriately in a *proper* case.

APPEARANCES OF COUNSEL

Free Legal Assistance Group (FLAG) for petitioner.
Yulo and Bello Law Office for respondents.
J. Barte Law Office for petitioner.

D E C I S I O N

BRION, *J.*:

Before the Court are the Consolidated Petitions for *Quo Warranto*,[1] and *Certiorari* and/or Prohibition[2] with urgent prayer for the issuance of a temporary restraining order (*TRO*)

[1] Under Rule 66 of the Rules of Court.

[2] Under Rule 65 of the Rules of Court.

and/or preliminary injunction filed by Atty. Luis Mario General (*petitioner*). The petitioner seeks to declare ***unconstitutional*** the appointments of Alejandro S. Urro, Constancia P. de Guzman and Eduardo U. Escueta (collectively, *the respondents*) as Commissioners of the National Police Commission (*NAPOLCOM*), and to prohibit then Executive Secretary Leandro Mendoza and Department of Interior and Local Government (*DILG*) Secretary Ronaldo V. Puno from enforcing the respondents' oath of office. Particularly, the petitioner asks that respondent Urro be ousted as NAPOLCOM Commissioner and he be allowed to continue in office.

THE ANTECEDENTS

On September 20, 2004, then President Gloria Macapagal-Arroyo (*PGMA*) appointed Imelda C. Roces (*Roces*) as acting Commissioner of the NAPOLCOM, representing the civilian sector.[3] On January 25, 2006, PGMA reappointed Roces as acting NAPOLCOM Commissioner.[4] When Roces died in September 2007, PGMA appointed the petitioner on July 21, 2008[5] as *acting* NAPOLCOM Commissioner in place of Roces. On the same date, PGMA appointed Eduardo U. Escueta (*Escueta*) as *acting* NAPOLCOM Commissioner and designated him as NAPOLCOM Vice Chairman.[6]

Later, PGMA appointed Alejandro S. Urro (*Urro*) in place of the petitioner, Constancia P. de Guzman in place of Celia Leones, and Escueta as *permanent* NAPOLCOM Commissioners. **Urro's appointment paper is *dated* March 5, 2010; while the appointment papers of De Guzman and Escueta are both dated March 8, 2010**.[7] On March 9, 2010, Escueta took

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[3] *Rollo*, p. 201.

[4] *Id.* at 202.

[5] On July 31, 2008, the petitioner took his oath of office before DILG Secretary (and NAPOLCOM Chairman) Ronaldo V. Puno; *id.* at 10.

[6] *Id.* at 33 and 180.

[7] *Id.* at 337 and 179.

his oath of office before Makati Regional Trial Court Judge Alberico Umali.[8]

In a letter **dated March 19, 2010**, DILG Head Executive Assistant/Chief-of-Staff Pascual V. Veron Cruz, Jr. issued separate congratulatory letters to the respondents. The letter uniformly reads.

> You have just been appointed COMMISSIONER xxx National Police Commission. xxx Attached is your appointment paper duly signed by Her Excellency, President Macapagal Arroyo.[9]

After being furnished a copy of the congratulatory letters on March 22, 2010,[10] the petitioner filed the present petition questioning the validity of the respondents' appointments mainly on the ground that it violates the constitutional prohibition against midnight appointments.[11]

On March 25, 2010 and April 27, 2010, respondents Urro and de Guzman took their oath of office as NAPOLCOM Commissioners before DILG Secretary Puno and Sandiganbayan Associate Justice Jose R. Hernandez, respectively.[12]

On July 30, 2010, the newly elected President of the Republic of the Philippines, His Excellency Benigno S. Aquino III, issued Executive Order No. 2 (*E.O. No. 2*) "Recalling, Withdrawing, and Revoking Appointments Issued by the Previous Administration in Violation of the Constitutional Ban on Midnight Appointments." The salient portions of E.O. No. 2 read:

> SECTION 1. Midnight Appointments Defined. – The following appointments made by the former President and other appointing authorities in departments, agencies, offices, and instrumentalities, including government-owned or controlled corporations, shall be considered as midnight appointments:

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[8] *Id.* at 162.

[9] *Id.* at 336, 338 and 340.

[10] *Id.* at 11.

[11] Article VII, Section 15 of the 1987 Constitution.

[12] *Rollo*, pp. 149 and 162.

(a) Those made on or after March 11, 2010, including all appointments bearing dates prior to March 11, 2010 where the appointee has accepted, or taken his oath, or assumed public office on or after March 11, 2010, except temporary appointments in the executive positions when continued vacancies will prejudice public service or endanger public safety as may be determined by the appointing authority.

(b) Those made prior to March 11, 2010, but to take effect after said date or appointments to office that would be vacant only after March 11, 2010.

(c) Appointments and promotions made during the period of 45 days prior to the May 10, 2010 elections in violation of Section 261 of the Omnibus Election Code.

SECTION 2. Recall, Withdraw, and Revocation of Midnight Appointments. **Midnight appointments, as defined under Section 1, are hereby recalled, withdrawn, and revoked**. The positions covered or otherwise affected are hereby declared vacant. (Emphasis supplied.)

THE PETITION

The petitioner claims that Roces was supposed to serve a full term of six years counted from the date of her appointment in October (should be September) 2004.[13] Since she failed to finish her six-year term, then the petitioner is entitled to serve this unexpired portion or until October (should be September) 2010.[14] The petitioner invokes Republic Act (*R.A.*) No. 6975[15] (otherwise known as the *Department of the Interior and Local Government Act of 1990*) which requires that vacancies in the NAPOLCOM "*shall* be filled up for the unexpired term only."[16] Because of the mandatory word "shall," the petitioner concludes that the appointment issued to him was really a "regular" appointment, *notwithstanding what appears in his appointment*

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[13] *Id.* at 201.

[14] *Ibid.*

[15] An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, December 13, 1990.

[16] Section 18, R.A. No. 6975.

paper. As a regular appointee, the petitioner argues that he cannot be removed from office except for cause.

The petitioner alternatively submits that even if his appointment were temporary, a temporary appointment does not give the President the license to abuse a public official simply because he lacks security of tenure.[17] He asserts that the validity of his termination from office depends on the validity of the appointment of the person intended to replace him. He explains that until a presidential appointment is "officially released," there is no "appointment" to speak of. Since the appointment paper of respondent Urro, while bearing a date prior to the effectivity of the constitutional ban on appointments,[18] was officially released (*per* the congratulatory letter dated March 19, 2010 issued to Urro) when the appointment ban was already in effect, then the petitioner's appointment, though temporary in nature, should remain effective as no new and valid appointment was effectively made.

The petitioner assails the validity of the appointments of respondents De Guzman and Escueta, claiming that they were also made in violation of the constitutional ban on appointments.

THE COMMENTS OF THE RESPONDENTS and THE OFFICE OF THE SOLICITOR GENERAL (*OSG*)

Prefatorily, the respondents characterize Escueta's inclusion in the present petition as an error since his appointment, acceptance and assumption of office all took place before the constitutional ban on appointments started. Thus, there is no "case or controversy" as to Escueta.

The respondents posit that the petitioner is not a real party-in-interest to file a petition for *quo warranto* since he was merely appointed in an acting capacity and could be validly removed from office at anytime.

The respondents likewise counter that what the ban on midnight appointments under Section 15, Article VII of the

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

[18] The constitutional ban on appointments started on March 10, 2010.

Constitution prohibits is only the *making* of an appointment by the President sixty (60) days before the next presidential elections and until his term expires; it does not prohibit the *acceptance* by the appointee of his appointment within the same prohibited period.[19] The respondents claim that "appointment" which is a presidential act, must be distinguished from the "acceptance" or "rejection" of the appointment, which is the act of the appointee. Section 15, Article VII of the Constitution is directed only against the President and his act of appointment, and is not concerned with the act/s of the appointee. Since the respondents were *appointed* (*per* the date appearing in their appointment papers) before the constitutional ban took effect, then their appointments are valid.

The respondents assert that their appointments cannot be considered as midnight appointments under the *Dominador R. Aytona v. Andres V. Castillo, et al.*[20] ruling, as restated in *In Re: Appointments dated March 30, 1998 of Hon. Mateo A. Valenzuela, et al.*[21] and *Arturo M. de Castro v. Judicial and Bar Council, et al.*,[22] since the petitioner failed to substantiate his claim that their appointments were made only "for the purpose of influencing the Presidential elections," or for "partisan reasons."[23]

The respondents pray for the issuance of a TRO to stop the implementation of E.O. No. 2, and for the consolidation of this case with the pending cases of *Tamondong v. Executive Secretary*[24] and *De Castro v. Office of the President*[25] which similarly assail the validity of E.O. No. 2.

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[19] *Rollo,* p. 160.

[20] G.R. No. L-19313, January 19, 1962, 4 SCRA 1.

[21] A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408.

[22] G.R. No. 191002, G.R. No. 191032, G.R. No. 191057, A.M. No. 10-2-5-SC, G.R. No. 191149, G.R. No. 191342, and G.R. No. 191420, March 17, 2010.

[23] *Rollo,* p. 166.

[24] Docketed as G.R. No. 192987.

[25] Docketed as G.R. No. 192991.

On the other hand, while the OSG considers the respondents' appointments within the scope of "midnight appointments" as defined by E.O. No. 2, the OSG nonetheless submits that the petitioner is not entitled to the remedy of *quo warranto* in view of the *nature* of his appointment. The OSG claims that since an appointment in an acting capacity cannot exceed one year, the petitioner's appointment *ipso facto* expired on July 21, 2009.[26]

PETITIONER'S REPLY

The petitioner argues in reply that he is the legally subsisting commissioner until another qualified commissioner is validly appointed by the new President to replace him.[27]

The petitioner likewise claims that the respondents appeared to have skirted the element of *issuance* of an appointment in considering whether an appointment is made. The petitioner asserts that to constitute an appointment, the President's act of affixing his signature must be coupled with the physical issuance of the appointment to the appointee – *i.e.*, the appointment paper is officially issued in favor of the appointee through the President's proper Cabinet Secretary. The *making* of an appointment is different from its *issuance* since prior to the official issuance of an appointment, the appointing authority enjoys the prerogative to change his mind. In the present case, the respondents' appointment papers were officially issued and communicated to them only on March 19, 2010, well within the period of the constitutional ban, as shown by the congratulatory letters individually issued to them.

Given this premise, the petitioner claims that he correctly impleaded Escueta in this case since his appointment also violates the Constitution. The petitioner adds that Escueta was appointed on July 21, 2008, although then as *acting* NAPOLCOM Commissioner. By *permanently* appointing him as NAPOLCOM

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[26] Citing Section 17(3), Chapter 5, Title I, Book III of E.O. No. 292; and *Pimentel, Jr. v. Ermita*, G.R. No. 164978, October 13, 2005, 472 SCRA 587.

[27] *Rollo*, pp. 222-223.

Commissioner, he stands to be in office for more than six years, in violation of R.A. No. 6975.[28]

The petitioner argues that even granting that the President can extend appointments in an acting capacity to NAPOLCOM Commissioners, it may not be done by "successive appointments" in the same capacity without violating R.A. No. 6975, as amended, which provides a fixed and staggered term of office for NAPOLCOM Commissioners.[29]

THE COURT'S RULING

We dismiss the petition for lack of merit.

When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.[30]

Both parties dwelt lengthily on the *issue of constitutionality* of the respondents' appointments in light of E.O. No. 2 and the subsequent filing before the Court of several petitions questioning this Executive Order. The parties, however, appear to have overlooked the basic principle in constitutional adjudication that enjoins the Court from passing upon a constitutional question, although properly presented, if the case can be disposed of on some other ground.[31] In constitutional law terms, this means that we ought to refrain from resolving any constitutional issue "unless the constitutional question is the *lis mota* of the case."

Lis mota literally means "the cause of the suit or action." This last requisite of judicial review is simply an offshoot of

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[28] *Id.* at 268.

[29] *Id.* at 279-280.

[30] *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81.

[31] *Sotto v. Commission on Elections*, 76 Phil. 516 (1946).

the presumption of validity accorded the executive and legislative acts of our co-equal branches of the government. Ultimately, it is rooted in the principle of separation of powers. Given the presumed validity of an executive act, the petitioner who claims otherwise has the burden of showing first that the case cannot be resolved unless the constitutional question he raised is determined by the Court.[32]

In the present case, the constitutionality of the respondents' appointments is **not** the *lis mota* of the case. From the submitted pleadings, what is decisive is the determination of whether the petitioner has a cause of action to institute and maintain this present petition – a *quo warranto* against respondent Urro. If the petitioner fails to establish his cause of action for *quo warranto,* a discussion of the constitutionality of the appointments of the respondents is rendered completely unnecessary. The inclusion of the grounds for *certiorari* and/or prohibition does not alter the essential character of the petitioner's action since he does not even allege that he has a personal and substantial interest in raising the constitutional issue insofar as the other respondents are concerned.

The resolution of whether a cause of action exists, in turn, hinges on the nature of the petitioner's appointment. We frame the issues under the following questions:

1. What is the nature of the petitioner's appointment as acting NAPOLCOM Commissioner?
2. Does the petitioner have the clear right to be reinstated to his former position and to oust respondent Urro as NAPOLCOM Commissioner?

I. Nature of petitioner's appointment

a. A staggered term of office is not inconsistent with an acting appointment

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[32] *People v. Vera*, 65 Phil. 56 (1937).

The petitioner asserts that contrary to what appears in his appointment paper, the appointment extended to him was really a regular appointment; thus, he cannot be removed from office except for cause. The petitioner argues that the appointment of an *acting* NAPOLCOM Commissioner or, at the very least, the "successive appointments" of NAPOLCOM Commissioners in an acting capacity contravenes the safeguards that the law - R.A. No. 6975[33] - intends through the staggered term of office of NAPOLCOM Commissioners.

Notably, the petitioner does not expressly claim that he was issued a **permanent** appointment; rather, he claims that his appointment is actually a **regular** appointment since R.A. No. 6975 does not allegedly allow an appointment of a NAPOLCOM Commissioner in an acting capacity.

At the outset, the petitioner's use of terms needs some clarification. Appointments may be classified into two: *first*, as to its nature; and *second*, as to the manner in which it is made.[34]

Under the **first classification**, appointments can either be permanent *or* temporary (acting). A basic distinction is that a permanent appointee can only be removed from office for cause; whereas a temporary appointee can be removed even without

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[33] R.A. No. 6975, Section 16 reads:

> **Section 16. *Term of Office*.** – The four (4) regular and full-time Commissioners shall be appointed by the President upon the recommendation of the Secretary. Of the first four (4) commissioners to be appointed, two (2) commissioners shall serve for six (6) years and the two (2) other commissioners for four (4) years. All subsequent appointments shall be for a period of six (6) years each, without reappointment or extension.

R.A. No. 8551, Section 7 reads:

> Section 7. Section 16 of Republic Act No. 6975 is hereby amended to read as follows:
>
> "SEC. 16. Term of Office. — The four (4) regular and full-time Commissioners shall be appointed by the President for a term of six (6) years without re-appointment or extension."

[34] See *Marohombsar v. Court of Appeals*, G.R. No. 126481, February 18, 2000, 326 SCRA 62.

hearing or cause.[35] Under the **second classification**, an appointment can either be regular *or ad interim*. A regular appointment is one made while Congress is in session, while an *ad interim* appointment is one issued during the recess of Congress. In strict terms, presidential appointments that require no confirmation from the Commission on Appointments[36] cannot be properly characterized as either a regular or an *ad interim* appointment.

In this light, what the petitioner may have meant is a *permanent* (as contrasted to a temporary or acting) appointment to the office of a NAPOLCOM Commissioner, at least for the duration of the unexpired portion of his predecessor (Roces).

Generally, the power to appoint vested in the President includes the power to make temporary appointments, **unless he is *otherwise specifically* prohibited by the Constitution or by the law, or where an acting appointment is repugnant to the nature of the office involved**.[37] The President's power to issue an acting appointment is particularly authorized by the Administrative Code of 1987 (Executive Order No. 292).

CHAPTER 5

POWER OF APPOINTMENT

Section 16. *Power of Appointment.* - The President shall exercise the power to appoint such officials as provided for in the Constitution and laws.

Section 17. Power to Issue Temporary Designation. –

(1) **The President may temporarily designate an officer** already in the government service **or any other competent person** to perform the functions of an office **in the executive branch**, appointment to which is vested in him by law, when: (a) the officer regularly appointed to the office is unable to perform

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[35] *Marohombsar v. Alonto, Jr.*, G.R. No. 93711, February 25, 1991, 194 SCRA 390.

[36] See *Calderon v. Carale*, G.R. No. 91636, April 23, 1992, 208 SCRA 254.

[37] *Cabiling v. Pabualan*, G.R. Nos. L-21764 and L-21765, May 31, 1965, 14 SCRA 274, citing Tañada and Carreon, Philippine Political Law, 1961 ed.

his duties by reason of illness, absence or any other cause; or (b) there exists a vacancy;

(2) xxx

(3) In no case shall a temporary designation exceed one (1) year.

The purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge those functions pending the selection of a permanent or another appointee. An acting appointee accepts the position on the condition that he shall surrender the office once he is called to do so by the appointing authority. Therefore, his term of office is not fixed but endures at the pleasure of the appointing authority. His separation from the service does not import removal but merely the expiration of his term — a mode of termination of official relations that falls outside the coverage of the constitutional provision on security of tenure[38] since no removal from office is involved.

The power to appoint is essentially executive in nature[39] and the limitations on or qualifications in the exercise of this power are strictly construed.[40] In the present case, the petitioner posits that the law itself, R.A. No. 6975, prohibits the appointment of a NAPOLCOM Commissioner in an acting capacity by staggering his term of office. R.A. No. 6975, on the term of office, states:

Section 16. *Term of Office*. – The four (4) regular and full-time Commissioners shall be appointed by the President upon the recommendation of the Secretary. Of the first four (4) commissioners to be appointed, two (2) commissioners shall serve for six (6) years and the two (2) other commissioners for four (4) years. All subsequent appointments shall be for a period of six (6) years each, without reappointment or extension.

Generally, the purpose for staggering the term of office is to *minimize* the appointing authority's opportunity to appoint a

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[38] *Achacoso v. Macaraig*, G.R. No. 93023, March 13, 1991, 195 SCRA 235.

[39] *Pimentel, Jr. v. Ermita, supra* note 24.

[40] *Sarmiento III v. Mison*, No. L-79974, December 17, 1987, 156 SCRA 549.

majority of the members of a collegial body. It also intended to ensure the continuity of the body and its policies.[41] A staggered term of office, however, is not a statutory prohibition, direct or indirect, against the issuance of acting or temporary appointment. It does not negate the authority to issue acting or temporary appointments that the Administrative Code grants.

Ramon P. Binamira v. Peter D. Garrucho, Jr.,[42] involving the Philippine Tourism Authority (*PTA*), is an example of how this Court has recognized the validity of temporary appointments in vacancies in offices whose holders are appointed on staggered basis. Under Presidential Decree (*P.D.*) No. 189,[43] (the charter of the PTA, as amended by P.D. No. 564[44] and P.D. No. 1400[45]), the members of the PTA's governing body are all presidential appointees whose terms of office are also staggered.[46] This, notwithstanding, the Court sustained the temporary character

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[41] Isagani A. Cruz, Philippine Political Law, 2002 ed. p. 301.

[42] G.R. No. 92008, July 30, 1990, 188 SCRA 154.

[43] AMENDING PART IX OF THE INTEGRATED REORGANIZATION PLAN BY RENAMING THE DEPARTMENT OF TRADE AND TOURISM AS THE DEPARTMENT OF TOURISM, AND CREATING THE DEPARTMENT OF TOURISM WITH A PHILIPPINE TOURIST AUTHORITY ATTACHED TO IT IN LIEU OF PHILIPPINE TOURIST COMMISSION; May 11, 1973.

[44] REVISING THE CHARTER OF THE PHILIPPINE TOURISM AUTHORITY CREATED UNDER PRESIDENTIAL DECREE NO. 189, DATED MAY 11, 1973; October 2, 1974.

[45] FURTHER AMENDING PRESIDENTIAL DECREE 564, AS AMENDED, OTHERWISE KNOWN AS THE REVISED CHARTER OF THE PHILIPPINE TOURISM AUTHORITY, AND FOR OTHER PURPOSES; June 5, 1978. Section 2 of P.D. No.1400 reads:

Section 2. Section 23 is hereby amended by adding a new Section to read as follows:

"Section 23-A. General Manager. Appointment and Tenure. The General Manager shall be appointed by the President of the Philippines and shall serve for a term of six (6) years unless sooner removed for cause; Provided, That upon the expiration of his term, he shall serve as such until his successor shall have been appointed and qualified."

[46] Sections 14-16 of P.D. No. 564 reads:

of the appointment extended by the President in favor of the PTA General Manager, even if the law[47] also fixes his term of office at six years unless sooner removed for cause.

Interestingly, even a staggered term of office does not ensure that at no instance will the appointing authority appoint all the members of a body whose members are appointed on staggered basis.

The post-war predecessor of the NAPOLCOM was the Police Commission created under R.A. No. 4864.[48] Pursuant to the 1987

Section 14. Board of Directors Composition. The corporate powers and functions of the Authority shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board, which shall be composed of: (a) the Secretary of Tourism as Chairman; (b) the General Manager of the Authority as Vice Chairman; and (c) three (3) part-time members who shall be appointed by the President of the Philippines. The Chairman of the Board may at the same time be appointed by the President as General Manager of the Authority.

Section 15. Term of Office. The term of office of the part-time members of the Board shall be six years. Of the part-time members first appointed, one shall hold office for six years, one for four years, and the last one for two years. A successor to a member whose term has expired shall be appointed for the full term of six years from the date of expiration of the term for which his predecessor was appointed.

Section 16. Vacancy Before Expiration of Term. Any member appointed to fill a vacancy in the Board occurring prior to the expiration of the term for which his predecessor was appointed shall serve only for the unexpired portion of the term of his predecessor.

[47] P.D. No. 1400.

[48] AN ACT CREATING THE POLICE COMMISSION, AMENDING AND REVISING THE LAWS RELATIVE TO THE LOCAL POLICE SYSTEM, AND FOR OTHER PURPOSES; August 8, 1966. Section 3 of R.A. No. 4864 reads:

Sec. 3. Creation of Police Commission. To carry out the objectives of this Act, there is hereby created a Police Commission under the Office of the President of the Philippines composed of a chairman and two other members, to be appointed by the President with the consent of the Commission on Appointments, and who shall hold office for a term of seven years and may not be reappointed. Of the members of the Police Commission first appointed, one shall hold office for seven years, another for five years and the other for three years. The Chairman and members of the Police Commission may only be removed from office for cause.

constitutional provision mandating the creation of one national civilian police force,[49] Congress enacted R.A. No. 6975 and created the NAPOLCOM to exercise, *inter alia*, "administrative control over the Philippine National Police." Later, Congress enacted R.A. No. 8551 which substantially retained the organizational structure, powers and functions of the NAPOLCOM.[50] Under these laws, the President has appointed the members of the Commission whose terms of office are staggered.

Under Section 16 of R.A. No. 6975, the NAPOLCOM Commissioners are all given a fixed term of six years (except the two of the first appointees who hold office only for four years). By staggering their terms of office however, the four regular commissioners would not vacate their offices at the same time since a vacancy will occur every two years.

Under the NAPOLCOM set up, the law does not appear to have been designed to attain the purpose of preventing the same President from appointing all the NAPOLCOM Commissioners by staggering their terms of office. R.A. No. 6975 took effect on January 1, 1991. In the usual course, the term of office of the first two regular commissioners would have expired in 1997, while the term of the other two commissioners would have expired in 1995. Since the term of the President elected in the first national elections under the 1987 Constitution expired on June 30, 1998, then, theoretically, the sitting President for the 1992-1998 term could appoint all the succeeding four regular NAPOLCOM Commissioners. The next President, on the other hand, whose term ended in 2004, would have appointed the next succeeding Commissioners in 2001 and 2003.

It is noteworthy, too, that while the Court nullified the attempt of Congress to consider the terms of office of the then NAPOLCOM Commissioners as automatically expired on the ground that there was no *bona fide* reorganization of the

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[49] Section 6, Article XVI of the Constitution.

[50] See *Canonizado v. Aguirre*, G.R. No. 133132, January 25, 2000, 323 SCRA 312.

NAPOLCOM,[51] a provision on the staggering of terms of office is evidently absent in R.A. No. 8551 - the amendatory law to R.A. No. 6975. Section 7 of R.A. No. 8551 reads:

Section 7. Section 16 of Republic Act No. 6975 is hereby amended to read as follows:

"SEC. 16. Term of Office. – The four (4) regular and full-time Commissioners shall be appointed by the President for a term of six (6) years without re-appointment or extension."

Thus, as the law now stands, the petitioner's claim that the appointment of an acting NAPOLCOM Commissioner is not allowed based on the staggering of terms of office does not even have any statutory basis.

Given the wide latitude of the President's appointing authority (and the strict construction against any limitation on or qualification of this power), the prohibition on the President from issuing an acting appointment must either be specific, or there must be a clear repugnancy between the nature of the office and the temporary appointment. No such limitation on the President's appointing power appears to be clearly deducible from the text of R.A. No. 6975 in the manner we ruled in *Nacionalista Party v. Bautista*.[52] In that case, we nullified the acting appointment issued by the President to fill the office of a Commissioner of the Commission on Elections (*COMELEC*) on the ground that it would *undermine the independence* of the COMELEC. We ruled that given the specific nature of the functions performed by COMELEC Commissioners, only a permanent appointment to the office of a COMELEC Commissioner can be made.

Under the Constitution, the State is mandated to establish and maintain a police force to be administered and controlled by a national police commission. Pursuant to this constitutional

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[51] *Id.*

[52] 85 Phil. 101 (1949); *Brillantes, Jr. v. Yorac*, G.R. No. 93867, December 18, 1990, 192 SCRA 358.

mandate, the Congress enacted R.A. No. 6975, creating the NAPOLCOM with the following powers and functions:[53]

Section 14. Powers and Functions of the Commission. — The Commission shall exercise the following powers and functions:

a) Exercise administrative control and operational supervision over the Philippine National Police which shall mean the power to:

x x x x x x x x x

b) Advise the President on all matters involving police functions and administration;

c) Render to the President and to the Congress an annual report on its activities and accomplishments during the thirty (30) days after the end of the calendar year, which shall include an appraisal of the conditions obtaining in the organization and administration of police agencies in the municipalities, cities and provinces throughout the country, and recommendations for appropriate remedial legislation;

d) Recommend to the President, through the Secretary, within sixty (60) days before the commencement of each calendar year, a crime prevention program; and

e) **Perform such other functions necessary to carry out the provisions of this Act and as the President may direct.** [Emphasis added.]

We find nothing in this enumeration of functions of the members of the NAPOLCOM that would be subverted or defeated by the President's appointment of an acting NAPOLCOM Commissioner pending the selection and qualification of a permanent appointee. Viewed as an institution, a survey of pertinent laws and executive issuances[54] will show that the

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[53] As amended by R.A. No. 8551.

[54] R.A. No. 4864 (AN ACT CREATING THE POLICE COMMISSION, AMENDING AND REVISING THE LAWS RELATIVE TO THE LOCAL POLICE SYSTEM, AND FOR OTHER PURPOSES, August 8, 1966); P.D. No. 765 (PROVIDING FOR THE CONSTITUTION OF THE INTEGRATED NATIONAL POLICE AND FOR OTHER PURPOSES, August 8, 1975); E.O. No. 1040 (TRANSFERRING THE NATIONAL POLICE COMMISSION

NAPOLCOM has always remained as an office under or within the Executive Department.[55] Clearly, there is nothing repugnant between the petitioner's acting appointment, on one hand, and the nature of the functions of the NAPOLCOM Commissioners or of the NAPOLCOM as an institution, on the other.

b. R.A. No. 6975 does not prohibit the appointment of an acting NAPOLCOM Commissioner in filling up vacancies in the NAPOLCOM

The petitioner next cites Section 18 of R.A. No. 6975 to support his claim that the appointment of a NAPOLCOM Commissioner to fill a vacancy due to the permanent incapacity of a regular Commissioner can only be permanent and not temporary:

> **Section 18.** ***Removal from Office.*** – The members of the Commission may be removed from office for cause. All vacancies in the Commission, except through expiration of term, *shall* be filled up for the unexpired term only: Provided, That any person who shall be appointed in this case shall be eligible for regular appointment for another full term.

Nothing in the cited provision supports the petitioner's conclusion. By using the word "only" in Section 18 of R.A. No. 6975, the law's obvious intent is only to prevent the new

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TO THE OFFICE OF THE PRESIDENT, July 10, 1985); E.O. No. 379 (REALIGNING THE FUNCTIONS OF SUPERVISION AND CONTROL OVER THE INTEGRATED NATIONAL POLICE PURSUANT TO SECTION 31, CHAPTER 10, BOOK III OF EXECUTIVE ORDER NO. 202, November 24, 1989).

[55] When the Police Commission was reorganized as the National Police Commission in 1972, the latter was under the Office of the President. In 1975, it was transferred to the Ministry (now Department) of National Defense. Ten years later, it was placed again under the Office of the President. In 1991, a new NAPOLCOM was created "within the Department [of Interior and Local Government.]" Later, Congress enacted R.A. No. 8551 making the NAPOLCOM an "agency *attached* to the Department [of Interior and Local Government] for policy and program coordination."

appointee from serving *beyond* the term of office of the original appointee. It does not prohibit the new appointee from serving *less* than the unexpired portion of the term as in the case of a temporary appointment.

While the Court previously inquired into the true nature of a supposed acting appointment for the purpose of determining whether the appointing power is *abusing* the principle of temporary appointment,[56] the petitioner has not pointed to any circumstance/s which would warrant a second look into and the invalidation of the temporary nature of his appointment.[57]

Even the petitioner's citation of Justice Puno's[58] dissenting opinion in *Teodoro B. Pangilinan v. Guillermo T. Maglaya, etc.*[59] is inapt. Like the petitioner, Pangilinan was merely appointed in an acting capacity and unarguably enjoyed no security of tenure. He was relieved from the service after exposing certain anomalies involving his superiors. Upon hearing his plea for reinstatement, the Court unanimously observed that Pangilinan's relief was a punitive response from his superiors. The point of disagreement, however, is whether Pangilinan's lack of security of tenure deprives him of the right to seek reinstatement. Considering that the law (Administrative Code of 1987) allows temporary appointments only for a period not exceeding twelve (12) months, the majority considered Pangilinan to be without any judicial remedy since at the time of his separation, he no longer had any right to the office. Justice Puno dissented, arguing that Pangilinan's superiors' *abuse* of his temporary appointment furnishes the basis for the relief he seeks.

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[56] *Marohombsar v. Alonto, Jr., supra* note 33.

[57] In *Marohombsar v. Alonto, Jr. Ibid,* the Court found that there are several reasons which indicate that the maneuverings of the appointing authority were *mala fide* undertaken. Significantly, the Court found that what was actually issued to the appointee is not an acting but an *ad interim* appointment, which is actually a permanent appointment.

[58] Later, Chief Justice.

[59] G.R. No. 104216, August 20, 1993, 225 SCRA 511.

In the present case, the petitioner does not even allege that his separation from the office amounted to an abuse of his temporary appointment that would entitle him to the incidental benefit of reinstatement.[60] As we did in *Pangilinan*,[61] we point out that the petitioner's appointment as Acting Commissioner was time-limited. His appointment *ipso facto* expired on July 21, 2009 when it was not renewed either in an acting or a permanent capacity. With an expired appointment, he technically now occupies no position on which to anchor his *quo warranto* petition.

c. The petitioner is estopped from claiming that he was permanently appointed

The petitioner's appointment paper is dated July 21, 2008. From that time until he was apprised on March 22, 2010 of the appointment of respondent Urro, the petitioner faithfully discharged the functions of his office without expressing any misgivings on the character of his appointment. However, when called to relinquish his office in favor of respondent Urro, the petitioner was quick on his feet to refute what appeared in his appointment papers.

Under these facts, the additional circumstance of estoppel clearly militates against the petitioner. A person who accepts an appointment in an acting capacity, extended and received without any protest or reservation, and who acts by virtue of that appointment for a considerable time, cannot later on be heard to say that the appointment was really a permanent one so that he could not be removed except for cause.[62]

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[60] Dissenting Opinion of Justice (later, Chief Justice) Puno; 225 SCRA 522.

[61] *Ibid.*

[62] *Cabiling, et al. v. Pabulaan, et al.*, 121 Phil. 1068 (1965); and *Marohombsar v. Alonto, Jr., supra* note 33.

II. An acting appointee has no cause of action for quo warranto against the new appointee

The Rules of Court requires that an *ordinary* civil action must be based on a cause of action,[63] which is defined as an act or omission of one party in violation of the legal right of the other which causes the latter injury. While a *quo warranto* is a *special* civil action, the existence of a cause of action is not any less required since both special and ordinary civil actions are governed by the rules on ordinary civil actions subject only to the rules prescribed specifically for a particular special civil action.[64]

Quo warranto is a remedy to try disputes with respect to the title to a public office. Generally, *quo warranto* proceedings are commenced by the Government as the proper party-plaintiff. However, under Section 5, Rule 66 of the Rules of Court, an individual may commence such action if he claims to be entitled to the public office allegedly usurped by another. We stress that the person instituting the *quo warranto* proceedings in his own behalf must show that he is entitled to the office in dispute; otherwise, the action may be dismissed at any stage.[65] Emphatically, Section 6, Rule 66 of the same Rules requires the petitioner to state in the petition his right to the public office and the respondent's unlawful possession of the disputed position.

As early as 1905,[66] the Court already held that for a petition for *quo warranto* to be successful, the suing private individual must show a clear right to the contested office.[67] His failure to establish this right warrants the dismissal of the suit for lack of cause of action; it is not even necessary to pass upon the right

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[63] Section 1, Rule 2 of the Rules of Court.

[64] Section 3(a), par. 2, Rule 1 of the Rules of Court.

[65] *Liban v. Gordon*, G.R. No. 175352, July 15, 2009, 593 SCRA 68.

[66] *Acosta v. Flor*, 5 Phil. 18 (1905).

[67] *Topacio v. Ong*, G.R. No. 179895, December 18, 2008, 574 SCRA 817.

of the defendant who, by virtue of his appointment, continues in the undisturbed possession of his office.[68]

Since the petitioner merely holds an acting appointment (and an expired one at that), he clearly does not have a cause of action to maintain the present petition.[69] The essence of an acting appointment is its temporariness and its consequent revocability at any time by the appointing authority.[70] The petitioner in a *quo warranto* proceeding who seeks reinstatement to an office, on the ground of usurpation or illegal deprivation, must prove his clear right[71] to the office for his suit to succeed; otherwise, his petition must fail.

From this perspective, the petitioner must first clearly establish his *own* right to the disputed office as a condition precedent to the consideration of the unconstitutionality of the respondents' appointments. The petitioner's failure in this regard renders a ruling on the constitutional issues raised completely unnecessary. Neither do we need to pass upon the validity of the respondents' appointment. These latter issues can be determined more appropriately in a *proper* case.

WHEREFORE, the petition is *DISMISSED.*

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Nachura, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Carpio Morales, J., no part.

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[68] *Castro v. Del Rosario, et al.,* G.R. No. L-17915, January 31, 1967, 19 SCRA 196, citing *Acosta v. Flor*, 5 Phil. 18.

[69] *Sevilla v. Court of Appeals*, G.R. No. 88498, June 9, 1992, 209 SCRA 637.

[70] *Achacoso v. Macaraig, supra* note 36; and *Quitiquit v. Villacorta*, 107 Phil. 1060 (1960).

[71] *Carillo v. Court of Appeals*, G.R. No. L-24554, May 31, 1967, 77 SCRA 170.

SECOND DIVISION

[A.M. No. P-10-2803. March 30, 2011]

JUDGE JEOFFRE W. ACEBIDO, Regional Trial Court, Branch 41, Cagayan de Oro City, *complainant, vs.* **LUDYCISSA A. HALASAN, Court Stenographer III, and JOEL A. LARGO, Utility Worker I, Regional Trial Court, Branch 41, Cagayan de Oro City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COURT EMPLOYEES ARE ENJOINED TO ADHERE TO THE EXACTING STANDARDS OF MORALITY AND DECENCY IN THEIR PROFESSIONAL AND PRIVATE CONDUCT.— The Court once again reminds its employees that the image of a court of justice is mirrored in the conduct, official or otherwise, of the women and men who work in the judiciary, from the judge to the lowest of its personnel. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the court of justice.

2. ID.; ID.; IMMORAL CONDUCT IS A GRAVE OFFENSE; PENALTY.— Under the Civil Service Rules, immoral conduct is a grave offense punishable with suspension from six months and one day to one year for the first offense. Considering that this is the first offense on the part of respondent Largo, and that his relationship with Halasan had already ceased and they were no longer working in the same station, we deem it proper to impose the penalty of suspension in its minimum period to respondent Largo.

3. ID.; ID.; ID.; WHEN IMPOSABLE PENALTY MAY BE REDUCED.— As regards respondent Halasan, the Court is not precluded from tempering justice with mercy, considering the following circumstances in this case: (1) Halasan has been separated in fact from her husband for four years when the relationship with Largo happened; (2) She has been an employee

of the Court for 19 years; (3) She solely supports five of her children who live with her, including three minor children, one of whom is very sickly. The suspension of Halasan from the service will be a heavy toll on the children who are innocent victims in this case; (4) She volunteered to be detailed to another station to stay away from respondent Largo and to cut the relationship; (5) Respondent Largo admitted that he took advantage of Halasan's emotional weakness and vulnerability; and (6) This case is the first time that Halasan is being found administratively liable. Hence, instead of the penalty of suspension, we impose upon respondent Halasan a fine of ₱10,000.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is an an administrative case for disgraceful and immoral conduct filed by Judge Jeoffre W. Acebido (Judge Acebido), Presiding Judge of the Regional Trial Court of Misamis Oriental, Branch 41, Cagayan de Oro City against Ludycissa A. Halasan (Halasan), Court Stenographer III, and Joel A. Largo (Largo), Utility Worker I of the Regional Trial Court, Branch 41, Cagayan de Oro City.

The Antecedent Facts

The case originated from a letter dated 27 October 2008 of Judge Acebido addressed to Ms. Caridad A. Pabello, Officer-in-Charge, Office of the Administrative Services, Office of the Court Administrator (OCA) objecting to the application for promotion of respondent Largo who was applying for the position of Process Server. In a letter dated 23 January 2009, Judge Acebido alleged that sometime in October 2008, he learned that Largo had an illicit relationship with respondent Halasan. Judge Acebido alleged that he recommended that Largo and Halasan be detailed to separate courts and his recommendation was approved by the Executive Judge.

The OCA treated Judge Acebido's letter as a complaint and required Largo and Halasan to file their respective comments.

In her comment, Halasan alleged that she had been separated with her husband for four years. She admitted that she had a relationship with Largo, who helped her in her times of trouble. However, her relationship with Largo already ended after she disclosed it to Atty. Nelison P. Salcedo, Branch Clerk of Court, and requested that she be transferred to another court. She stated that she was of the impression that the matter was already closed since her transfer. She begged for a chance to redeem herself for the sake of her seven children, all of whom depended solely on her for support.

In his comment, Largo likewise admitted his relationship with Halasan, which lasted for three months. He alleged that he regretted that he took advantage of Halasan's emotional weakness and vulnerability and that he already distanced himself from her since his transfer to another office.

The Recommendation of the OCA

In its evaluation of the case, the OCA stated that Halasan disclosed that her relationship with Largo started sometime in July 2008. On the other hand, Largo admitted that the relationship lasted for three months or until he and Halasan were detailed to separate courts. In view of the admissions made by respondents, the OCA stated that there is no need to require further proof of the relationship.

The OCA recommended that:

1. the 23 January 2009 Letter of Judge Jeoffre W. Acebido, Regional Trial Court, Branch 41, Cagayan de Oro City, be RE-DOCKETED as a formal administrative complaint against Ludycissa A. Halasan, Court Stenographer III and Joel A. Largo, Utility Worker I, same court;

2. respondents Halasan and Largo be found GUILTY of disgraceful and immoral conduct and be both suspended from the office for six (6) months and one (1) day without pay; and

3. respondents Halasan and Largo be STERNLY WARNED that they will be dismissed from the service should they resume with their illicit affair or commit the same or similar acts in the future.

In its 2 July 2010 Resolution, the Court re-docketed the letter of Judge Acebido as a formal administrative complaint and required the parties to manifest whether they are willing to submit the matter for resolution on the basis of the pleadings filed and the records submitted.

Halasan and Largo submitted their respective manifestations on their willingness to submit the case for resolution on the basis of the pleadings filed and records submitted. Judge Acebido submitted a letter that he could not comply with the 2 July 2010 Resolution because he had not filed an administrative complaint against Halasan and Largo.

The Issue

The sole issue in this case is whether respondents Halasan and Largo are guilty of disgraceful and immoral conduct.

The Ruling of this Court

The Court once again reminds its employees that the image of a court of justice is mirrored in the conduct, official or otherwise, of the women and men who work in the judiciary, from the judge to the lowest of its personnel.[1] Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the court of justice.[2]

In this case, we found respondents Halasan and Largo guilty of disgraceful and immoral conduct for which they may be held administratively liable.[3] The Court agrees with the OCA that

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[1] *Re: Anonymous Letter-Complaint against Jesusa Susana Cardozo, Clerk III, RTC Branch 44, Dagupan City*, A.M. No. P-06-2143, 12 June 2008, 554 SCRA 262.

[2] *Licardo v. Licardo*, A.M. No. P-06-2238, 27 September 2007, 534 SCRA 181.

[3] *Villanueva v. Court of Appeals*, G.R. No. 167726, 20 July 2006, 495 SCRA 824.

due to respondents' admission of their relationship, there is no need to present any other evidence to prove the allegations in Judge Acebido's letter.

Under the Civil Service Rules, immoral conduct is a grave offense punishable with suspension from six months and one day to one year for the first offense.[4] Considering that this is the first offense on the part of respondent Largo, and that his relationship with Halasan had already ceased and they were no longer working in the same station, we deem it proper to impose the penalty of suspension in its minimum period to respondent Largo.

As regards respondent Halasan, the Court is not precluded from tempering justice with mercy,[5] considering the following circumstances in this case:

1. Halasan has been separated in fact from her husband for four years when the relationship with Largo happened;

2. She has been an employee of the Court for 19 years;

3. She solely supports five of her children who lives with her, including three minor children, one of whom is very sickly. The suspension of Halasan from the service will be a heavy toll on the children who are innocent victims in this case;

4. She volunteered to be detailed to another station to stay away from respondent Largo and to cut the relationship;

5. Respondent Largo admitted that he took advantage of Halasan's emotional weakness and vulnerability; and

6. This case is the first time that Halasan is being found administratively liable.

Hence, instead of the penalty of suspension, we impose upon respondent Halasan a fine of ₱10,000.

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[4] *Gonzales v. Martillana*, 456 Phil. 59 (2003).

[5] See *Ramos v. Ramos*, A.M. No. CA-07-22-P, 25 January 2008, 542 SCRA 341, and *Floria v. Sunga*, 420 Phil. 637 (2001).

WHEREFORE, we impose upon respondent Joel A. Largo the penalty of *SUSPENSION* for six months and one day without pay, with a stern warning that a repetition of the same or similar conduct in the future will be dealt with more severely. We impose upon respondent Ludycissa A. Halasan a *FINE* in the amount of ₱10,000 with a warning that a repetition of the same or similar conduct in the future will be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 159450. March 30, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **OLIVIA ALETH GARCIA CRISTOBAL,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT BY THE COURT OF APPEALS; SUSTAINED AND CONCLUSIVE UPON THE SUPREME COURT AND OUGHT NOT TO BE DISTURBED; CASE AT BAR.— There is no question about the findings of fact being based on the evidence adduced by the Prosecution. The decisions of both lower courts are remarkable for their thoroughness and completeness. In fact, the accused did not impugn the findings of fact, and confined herself only to the validity of the information and the legality of her letter due to its being held admissible as evidence against her. Although she decried her failure to present her evidence on account of her having demurred without express leave of court, that, too, was not an obstacle to the correctness of the

findings of fact against her. Thus, we sustain the findings of fact, for findings of the CA upon factual matters are conclusive and ought not to be disturbed unless they are shown to be contrary to the evidence on record.

2. ID.; CRIMINAL PROCEDURE; INFORMATION; THE MAIN PURPOSE OF REQUIRING THE VARIOUS ELEMENTS OF THE CRIME TO BE SET FORTH IN THE INFORMATION IS TO ENABLE THE ACCUSED TO ADEQUATELY PREPARE HER DEFENSE; APPLICATION IN CASE AT BAR.— The main purpose of requiring the various elements of a crime to be set forth in the information is to enable the accused to adequately prepare her defense. As to the sufficiency of the allegation of the time or date of the commission of the offense, Section 6 and Section 11, Rule 110 of the *Revised Rules of Court*, the rules applicable. x x x Conformably with these rules, the information was sufficient because it stated the *approximate* time of the commission of the offense through the words "on or about the 2nd of January, 1996," and the accused could reasonably deduce the nature of the criminal act with which she was charged from a reading of its contents as well as gather by such reading whatever she needed to know about the charge to enable her to prepare her defense. The information herein did not have to state the precise date when the offense was committed, considering that the date was not a material ingredient of the offense. As such, the offense of qualified theft could be alleged to be committed on a date *as near as possible* to the actual date of its commission. Verily, December 29, 1995 and January 2, 1996 were dates only four days apart. With the information herein conforming to the standard erected by the *Revised Rules of Court* and pertinent judicial pronouncements, the accused was fully apprised of the charge of qualified theft involving the US$10,000.00 belonging to her employer *on or about* January 2, 1996.

3. ID.; ID.; DEMURRER TO EVIDENCE; FILING THEREOF WITHOUT EXPRESS LEAVE OF COURT MEANS THAT THE ACCUSED WAIVED HER RIGHT TO PRESENT EVIDENCE; SUSTAINED.— Under Section 15, Rule 119, of the *Revised Rules of Court*, the RTC properly declared the accused to have waived her right to present evidence because

she did not obtain the express leave of court for her demurrer to evidence, thereby reflecting her voluntary and knowing waiver of her right to present evidence. The RTC did not need to inquire into the voluntariness and intelligence of the waiver, for her opting to file her demurrer to evidence without first obtaining express leave of court effectively waived her right to present her evidence. It is true that the Court has frequently deemed the failure of the trial courts to conduct an inquiry into the voluntariness and intelligence of the waiver to be a sufficient cause to remand cases to the trial courts for the purpose of ascertaining whether the accused truly intended to waive their constitutional right to be heard, and whether they understood the consequences of their waivers. x x x Yet, the accused cannot be extended the benefit of *People v. Bodoso* and *Rivera v. People.* The factual milieus that warranted the safeguards in said criminal cases had nothing in common with the factual milieu in which the RTC deemed the herein accused to have waived her right to present evidence. The accused in *People v. Bodoso*, without filing a demurrer to evidence, expressly waived the right to present evidence. The Court felt that the trial court ought to have followed the steps outlined therein. The accused in *Rivera v. People* filed a demurrer to evidence without having to obtain an express leave of court, considering that the Sandiganbayan itself had told him to file the demurrer to evidence. Thus, after the demurrer to evidence was denied, the accused was held to be still entitled to present his evidence. The accused and her counsel should not have ignored the potentially prejudicial consequence of the filing of a demurrer to evidence without the leave of court required in Section 15, Rule 119, of the *Revised Rules of Court*. They were well aware of the risk of a denial of the demurrer being high, for by demurring the accused impliedly admitted the facts adduced by the State and the proper inferences therefrom. We cannot step in now to alleviate her self-inflicted plight, for which she had no one to blame but herself; otherwise, we may unduly diminish the essence of the rule that gave her the alternative option to waive presenting her own evidence.

4. ID.; EVIDENCE; ADMISSION; DEFINED AND CONSTRUED; NOT PRESENT IN CASE AT BAR.— An admission**,** if voluntary, is admissible against the admitter for the reason that it is fair to presume that the admission corresponds with

the truth, and it is the admitter's fault if the admission does not. By virtue of its being made by the party himself, an admission is competent primary evidence against the admitter. Worth pointing out is that the letter was not a confession due to its not expressly acknowledging the guilt of the accused for qualified theft. Under Section 30, Rule 130 of the *Rules of Court*, a confession is a declaration of an accused acknowledging guilt for the offense charged, or for any offense necessarily included therein. Nonetheless, there was no need for a counsel to have assisted the accused when she wrote the letter because she spontaneously made it while not under custodial investigation. Her insistence on the assistance of a counsel might be valid and better appreciated had she made the letter while under arrest, or during custodial investigation, or under coercion by the investigating authorities of the Government. The distinction of her situation from that of a person arrested or detained and under custodial investigation for the commission of an offense derived from the clear intent of insulating the latter from police coercion or intimidation underlying Section 12 of Article III (*Bill of Rights*) of the 1987 Constitution. x x x To reiterate, the rights under Section 12, *supra*, are available to "any person under investigation for the commission of an offense." The phrase does not cover all kinds of investigations, but contemplates only a situation wherein "*a person is already in custody as a suspect, or if the person is the suspect, even if he is not yet deprived in any significant way of his liberty*." The situation of the accused was not similar to that of a person already in custody as a suspect, or if the person is the suspect, even if she is not yet deprived in any significant way of his liberty.

5. CRIMINAL LAW; QUALIFIED THEFT; IMPOSABLE PENALTY.— Under Article 309, the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in the maximum period since the amount stolen exceeded ₱22,000.00. To determine the additional years of imprisonment prescribed in Article 309 (1), the amount of ₱22,000.00 should be deducted from ₱262,140.00, thus, leaving the amount of ₱240,140.00. The net amount should then be divided by ₱10,000.00, disregarding any amount below ₱10,000.00. The result is the incremental penalty of twenty-four (24) years which must then be added to the basic penalty of the maximum period

of *prision mayor* minimum and medium periods. The penalty of *prision mayor* in its minimum and medium periods has a range of six years (6) and one (1) day to ten (10) years. Its maximum period is eight (8) years, eight (8) months and one (1) day to ten (10) years, and the incremental penalty is twenty-four (24) years. Had appellant committed simple theft, the penalty should have been twenty years of *reclusion temporal*, the maximum penalty allowable under Article 309, subject to the indeterminate Sentence Law. Considering that the theft is qualified by grave abuse of confidence, the penalty is two degrees higher than that specified under Article 309. Under Article 25 of the Revised Penal Code, two degrees higher than *reclusion temporal* is death. However, Article 74 of the same Code provides that in cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, and if such higher penalty should be that of death, the same penalty and the accessory penalties of Article 40, shall be considered as the next higher penalty. The Supreme Court held that in such a case, the accused should be meted the penalty of *reclusion perpetua* for forty years with the accessory penalties of death under Article 40 of the Revised Penal Code.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Angel H. Gatmaitan for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

Although a waiver of the right to present evidence by the accused is not a trivial matter to be lightly regarded by the trial court, the filing of the demurrer to evidence without express leave of court operates as a waiver that binds the accused pursuant to the express provision of the *Rules of Court*.

Under challenge in this appeal is the decision promulgated on July 31, 2003 in C.A.-G.R. CR No. 24556, whereby the Court of Appeals (CA) affirmed the conviction for qualified

theft of the accused, a teller of complainant Prudential Bank, and punished her with *reclusion perpetua*,[1] thereby modifying the decision dated May 26, 2000 rendered by the Regional Trial Court, Branch 57, in Angeles City (RTC),[2] imposing an indeterminate sentence from ten (10) years and one (1) day of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum.

Antecedents

The information charged the accused with qualified theft, alleging:

> That on or about the 2nd of January, 1996, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, OLIVIA ALETH GARCIA CRISTOBAL, being then the teller of Prudential Bank, Angeles Main Branch, Sto. Rosario Street, Angeles City, and as such is entrusted with cash and other accountabilities, with grave abuse of trust and confidence reposed upon her by her employer, with intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away cash money amounting to $10,000.00, belonging to the Prudential Bank, Angeles Main Branch, represented by its Branch Manager, EDGARDO PANLILIO, to the damage and prejudice of Prudential Bank, Angeles Main Branch, in the aforementioned amount of TEN THOUSAND DOLLARS ($10,000.00) or its equivalent of TWO HUNDRED SIXTY THOUSAND PESOS (₱260,000.00), Philippine Currency and parity rate.
>
> ALL CONTRARY TO LAW.[3]

After the accused pleaded *not guilty* at arraignment, the State presented four witnesses, namely: Prudential Bank Branch Manager Edgardo Panlilio, Sr., Bank Auditor Virgilio Frias, Bank Cashier Noel Cunanan, and account holder Apolinario Tayag.

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[1] *Rollo*, pp. 54-73; penned by Associate Justice Noel G. Tijam, and concurred in by Associate Justice Portia Aliño-Hormachuelos and Associate Justice Edgardo P. Cruz (retired).

[2] Records, pp. 216-227; penned by Presiding Judge Omar T. Viola.

[3] *Id.*, p. 1.

The summary of the evidence of the State rendered in the assailed decision of the CA follows:[4]

x x x x x x x x x

Among the six tellers in the Angeles City main branch of Prudential Bank, accused-appellant (hereafter "appellant") was the only teller assigned to handle dollar deposits and withdrawals.

On January 2, 1996, an internal spot-audit team headed by Prudential Bank's senior audit examiner Virgilio Frias ("Frias"), inventoried the cash accountabilities of the said branch by manually counting the money in each of the tellers' cash boxes. While the books of the branch showed that appellant had a cash accountability of $15,040.52, the money in her cash box was only $5,040.52.

Asked about the shortage of $10,000.00, appellant explained that there was a withdrawal of $10,000.00 on December 29, 1995 after the cut-off time which would be treated as a withdrawal on January 2, 1996. Appellant then presented to Frias a withdrawal memo dated January 2, 1996 showing a withdrawal of $10,000.00 from Dollar Savings Account No. FX-836 ("FX-836") of Adoracion Tayag and her co-signatory, Apolinario Tayag.

On January 3, 1996, appellant showed the aforesaid withdrawal memo to the branch cashier, Noel Cunanan ("Cunanan"). Noticing that the said withdrawal memo did not contain the required signatures of two bank officers, Cunanan asked appellant what the nature of the transaction was. Appellant replied that the depositor, Apolinario Tayag, had instructed her to withdraw $10,000.00 from his account on January 3, 1996, through his driver whom he had sent to the bank. Cunanan, however, did not notice that while the withdrawal was supposed to have been made on January 3, 1996, the withdrawal memo was dated January 2, 1996. Cunanan then instructed appellant to have the withdrawal posted in the corresponding ledger and to bring the withdrawal memo back to him so he and the branch manager, Edgardo Panlilio, could affix their signatures.

Meanwhile, Frias checked the account ledger of FX-836, and found a "hold jacket" indicating that no withdrawal from the said account should be allowed to reduce its balance below $35,000.00. The supposed withdrawal of $10,000.00 had reduced the account balance of FX-836 to $26,077.51.

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[4] *Rollo*, pp. 55-58.

From the account ledger, Frias also discovered that a deposit of $10,000.00 was made on January 2, 1996. He found the deposit memo on file. Thereafter, Frias compared the signature on the withdrawal memo with the specimen signatures of the depositors in their signature card. Finding a "big difference" in the signatures, he referred the matter to the branch manager, Edgardo Panlilio ("Panlilio").

Asked by Panlilio to explain, appellant reiterated that the withdrawal was made after the cut-off time on December 29, 1995. Doubting her explanation, Frias conducted another cash count. At that time, appellant's accountability based on the books of the bank was $21,778.86, but the money in her cash box was only $11,778.86, thus, short of US$10,000.00. When Panlilio again asked appellant to explain, the latter started to cry and said she would explain to the bank president.

The next day, January 4, 1996, appellant told Panlilio that she gave the $10,000.00 to a person on December 29, 1995 because her family was being threatened.

In her letter to the bank president dated January 4, 1996, appellant apologized and explained her shortage of $10,000.00 and another shortage of ₱2.2 Million which the audit team had also discovered. She wrote:

> … Sometime in the month of September, a man approached me at my counter and handed me a note demanding me *(sic)* to give him a big amount of money of ₱600,000. I looked at him and told him I don't have any. He told me to get at my drawer and not to tell anybody because their companions are at the nearby of my house *(sic)* and threatened me that something will happened *(sic)* to my kids. That time he looked back and I also saw another man w/ radio at his waist, who stood up and went out. I nervously handed him the money. While doing this, I tried to pull the alarm at my counter but it was out of order. This alarm was out of order for quite sometime but I was still hoping it might work. Since that day, time and again, he kept on coming back and I could'nt do anything but to give in to his request. His second, he demanded for *(sic)* another ₱600,000 but I gave him only ₱530,000. The 3rd & 4th was ₱550,000 each. Last December 29, 1995 at around 3:00 pm, I was surprised to see him at my counter, again, he was asking for money. I was balancing my dollar transaction. But that time,

> I had delivered my peso cash box to our cashier. He saw the bundle of $10,000 which was on top of my desk because I was writing the breakdown on my cash count. He wanted me to give it to him & this time he pointed a gun at me and I got so nervous & gave him the dollars.
>
> During this time, in order for me to be balance with (sic) my transactions, I cash out checks (suppose to be for late deposit) & included them in today's clearing. The following day, I validated the deposit slips as cash deposit. . .

Apolinario Tayag denied withdrawing $10,000.00 from FX-836 either on December 29, 1995 or on January 2, 1996 when he was in Baguio City. He said he was not familiar with the withdrawal and deposit memos showing the withdrawal of $10,000.00 from the said account and the subsequent deposit of the same amount therein. He also denied the signatures thereon as his or his mother's.

x x x x x x x x x

Upon the State resting its case against the accused, her counsel filed a *Demurrer to Evidence and Motion to Defer Defense Evidence*,[5] praying for the dismissal of the charge on the ground that the evidence of the State did not suffice to establish her guilt beyond reasonable doubt.

However, the RTC denied the *Demurrer to Evidence and Motion to Defer Defense Evidence* and deemed the case submitted for decision on the basis that her filing her demurrer to evidence without express leave of court as required by Section 15, Rule 119, of the *Rules of Court* had waived her right to present evidence, *viz*:[6]

> WHEREFORE, the Demurer to Evidence filed by the accused is hereby denied for lack of merit.
>
> **Reviewing further the records of this case, there is evidence and proof that the Demurrer to Evidence filed by the accused Cristobal is without express leave of court hence, under Section 15 par. 2 of Rule 119, accused Cristobal has waived her right**

[5] *Id.*, pp. 129-136.

[6] Records, pp. 143-146.

to present evidence and submit the case for judgment on the basis of the evidence for the prosecution.

In view thereof, this case filed against accused Cristobal is hereby submitted for decision.

SO ORDERED.

On May 26, 2000, therefore, the RTC rendered its decision finding and pronouncing the accused guilty of qualified theft,[7] disposing:

WHEREFORE, the Court finds Olivia Aleth Cristobal guilty beyond reasonable doubt of the crime of Qualified Theft and hereby sentences her to suffer the penalty of imprisonment of ten (10) years and one (1) day of *prision mayor* to twenty (20) years of *reclusion temporal* as maximum.

Accused Cristobal is also ordered to pay Prudential Bank, the amount of US $10,000.00, representing the amount that was lost, plus interest.

SO ORDERED.

The accused appealed, but the CA affirmed her conviction on July 31, 2003, albeit modifying the penalty,[8] finding and ruling as follows:

The following circumstances as established by the prosecution's evidence, show beyond reasonable doubt that appellant stole US$10,000.00 from Prudential Bank:

1. Appellant was the only teller in the Angeles City main branch of Prudential Bank assigned to handle dollar transactions. Thus, it was only she who had access to the subject account for purposes of dollar deposits and withdrawals;

2. She admitted having transacted or processed the supposed withdrawal of US$10,000.00 from dollar savings account no. FX-836;

3. It was she who presented to the head auditor, Rolando Frias, the withdrawal memo for US$10,000.00 supposedly withdrawn from

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[7] *Id.*, pp. 216-227.

[8] *Supra*, note 1.

dollar savings account no. FX-836, saying that it was withdrawn on December 29, 1995 after the cut-off time and would be considered a withdrawal on January 2, 1996;

4. The said withdrawal memo did not contain the required signatures of two bank officers;

5. The supposed withdrawal of $10,000.00 from dollar savings account no. FX-836 reduced the balance thereof to ₱26,077.51, violating the "hold jacket" or instruction in the account ledger which disallowed any withdrawal from the said account that would reduce the balance thereof below ₱35,000.00;

6. The discrepancy in the signature on the withdrawal memo and the specimen signatures in the depositors' signature card;

7. Asked to explain the shortage of $10,000.00 revealed by the second cash count, following the discovery of the aforesaid "hold jacket" in the account ledger and discrepancy in the signatures, appellant began to cry, saying she would just explain to the bank president;

8. The depositor, Apolinario Tayag, denied withdrawing money from dollar savings account no. FX-836 either on December 29, 1995, when appellant claimed the withdrawal was made, or on January 2, 1996, the date of the withdrawal memo, at which time he was in Baguio City. He was not familiar with the withdrawal and deposit memos showing the withdrawal of $10,000.00 from the said account and the subsequent deposit of the same amount therein. He also denied that the signatures thereon belong to him or his mother, Adoracion Tayag, with whom he shares the account as co-signatory;

9. In her letter to the bank president, she admitted appropriating US$10,000.00 and ₱2.2 Million, and explained how she covered it up;

10. Appellant gave different and inconsistent explanations for her shortage of US$10,000.00. She explained to the auditors that the said amount was withdrawn on December 29, 1995 after the cut-off time, hence, would be considered as a withdrawal on January 2, 1996. To the branch cashier, Noel Cunanan, she said that Apolinario Tayag had instructed her to withdraw $10,000.00 from his account on *January 3, 1996*, through his driver whom he had sent to the bank. Later, she told Panlilio and the bank president that she gave the $10,000.00 to a person on December 29, 1995 because he had threatened her family; and

11. In her letter to the bank president, she mentioned five instances when the unidentified man supposedly threatened her and demanded money from her. However, she never reported any of these incidents to any of the bank officers or the police authorities.

Even without an eyewitness, the foregoing circumstances indicate that appellant committed the crime, to the exclusion of all others.

In the absence of an eyewitness, reliance on circumstantial evidence becomes inevitable. Circumstantial evidence is defined as that which indirectly proves a fact in issue through an inference which the factfinder draws from the evidence established. Resort thereto is essential when the lack of direct testimony would, in many cases, result in setting a felon free and denying proper protection to the community. In order that circumstantial evidence may be sufficient to convict, the same must comply with these essential requisites, *viz*., (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

As hereinbefore shown, there is more than one circumstance or indication of appellant's guilt. Moreover, the said circumstances, from which the act of taking could be inferred, had been established by the prosecution's evidence. And the combination of the said circumstances is clearly sufficient to convict the appellant of qualified theft beyond reasonable doubt.

In conclusion, We hold that the totality of the evidence points to no other conclusion than that accused-appellant is guilty of the crime charged. Evidence is weighed not counted. When facts or circumstances which are proved are not only consistent with the guilt of the accused but also inconsistent with his innocence, such evidence, in its weight and probative force, may surpass direct evidence in its effect upon the court. This is how it is in this case.

x x x x x x x x x

WHEREFORE, the assailed Decision convicting the accused-appellant of Qualified Theft is hereby *AFFIRMED* with *MODIFICATION* in that the penalty shall be *reclusion perpetua* and the accessory penalties of death under Article 40 of the Revised Penal Code, and accused-appellant shall pay Prudential Bank US$10,000.00, without interest.

SO ORDERED.

Issues

In her appeal, the accused submits that the CA gravely erred:

1. xxx in affirming the conviction of the accused on the basis of an information for qualified theft that charges the accused to have taken $10,000.00 on January 2, 1996 when the evidence on record based on various admissions of the prosecution's witnesses reveal that the accused did not and cannot take away $10,000.00 on January 2, 1996.
2. xxx in affirming the conviction of the accused based on an extra-judicial admission that was made without assistance of counsel and hearsay evidence as testified by the next most possible suspects to the loss.
3. xxx in affirming the conviction of the accused when the facts and evidence on record do not satisfy the elements of the crime as charged.
4. xxx in affirming the conviction of the accused when the very procedure employed by the trial court in the case at bench showed leniency to the prosecution and strictness to the defense in violation of the constitutional and statutory rights of the accused.
5. xxx in affirming the ruling of the trial court that the accused had waived her right to present evidence-in-chief despite the expressed motion to defer its presentation when the *demurrer to evidence* was filed.[9]

The assigned errors are restated thuswise:

(a) Whether the information filed against the accused was fatally defective;

(b) Whether the RTC correctly found that the accused had waived her right to present evidence in her defense; and

(c) Whether the extrajudicial admission of taking the amount involved contained in the letter of the accused to the

[9] *Rollo*, pp. 35-36.

President of Prudential Bank was admissible under the rules and jurisprudence.

Ruling

We deny the petition for review and affirm the CA's decision.

1.
Findings of CA and RTC are affirmed due to being based on the evidence

There is no question about the findings of fact being based on the evidence adduced by the Prosecution. The decisions of both lower courts are remarkable for their thoroughness and completeness. In fact, the accused did not impugn the findings of fact, and confined herself only to the validity of the information and the legality of her letter due to its being held admissible as evidence against her. Although she decried her failure to present her evidence on account of her having demurred without express leave of court, that, too, was not an obstacle to the correctness of the findings of fact against her. Thus, we sustain the findings of fact, for findings of the CA upon factual matters are conclusive and ought not to be disturbed unless they are shown to be contrary to the evidence on record.[10]

2.
Information was sufficient and valid

The petitioner submits that the information charged her with qualified theft that allegedly transpired on December 29, 1995, but the evidence at trial could not be the basis of her conviction because it actually proved that the taking had transpired on January 2, 1996; and that the discrepancy would unduly prejudice her rights as an accused to be informed of the charges as to enable her to prepare for her defense. To bolster her submission, she cites the testimony of Virgilio Frias[11] to the effect that she was cleared of her accountability upon her turning her cash box

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[10] *People v. Torrefiel*, G.R. No. 115431, April 18, 1996, 256 SCRA 369, 379.

[11] TSN, May 5, 1997, pp. 8-9; pp. 12-13.

over to the bank cashier on December 29, 1995, thereby negating the accusation that she had taken the money on December 29, 1995.

The petitioner's submission is untenable.

The main purpose of requiring the various elements of a crime to be set forth in the information is to enable the accused to adequately prepare her defense.[12] As to the sufficiency of the allegation of the time or date of the commission of the offense, Section 6 and Section 11, Rule 110 of the *Revised Rules of Court,* the rules applicable,[13] provide:

> Section 6. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; **the approximate time of the commission of the offense**; and the place wherein the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information. (5a)
>
> Section 11. *Time of the commission of the offense.* – **It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.** (10)

Conformably with these rules, the information was sufficient because it stated the *approximate* time of the commission of the offense through the words "on or about the 2nd of January, 1996," and the accused could reasonably deduce the nature of the criminal act with which she was charged from a reading of its contents as well as gather by such reading whatever she needed to know about the charge to enable her to prepare her defense.

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[12] *People v. Batin*, G.R. No.177223, November 28, 2007, 539 SCRA 272.

[13] The information was filed on May 30, 1996, prior to the effectivity on December 1, 2000 of the 2000 *Revised Rules of Criminal Procedure.*

The information herein did not have to state the precise date when the offense was committed, considering that the date was not a material ingredient of the offense. As such, the offense of qualified theft could be alleged to be committed on a date *as near as possible* to the actual date of its commission.[14] Verily, December 29, 1995 and January 2, 1996 were dates only four days apart.

With the information herein conforming to the standard erected by the *Revised Rules of Court* and pertinent judicial pronouncements, the accused was fully apprised of the charge of qualified theft involving the US$10,000.00 belonging to her employer *on or about* January 2, 1996.

3.
CA and RTC did not err in deeming petitioner to have waived her right to present evidence

The accused contended that:

x x x x x x x x x

(2) The trial court denied accused (*sic*) 'Demurrer To Evidence and Motion To Defer Defense Evidence' and ruled that the accused is considered to have waived her evidence (for alleged lack of leave of court). Although the accused is not principally relying on this error (because the prosecution's own evidence show that she is not guilty), still it was error for the trial court to deprive the accused of her day in court because the demurrer was at the same time, as stated in the title thereof, also a motion to defer defense evidence.[15]

The CA rejected her contention in the following manner:[16]

As to whether or not the Trial Court correctly ruled that appellant waived the presentation of her evidence when she filed her "Demurrer To Evidence and Motion to Defer Evidence" without prior leave of court, We rule in the affirmative.

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[14] *People v. Ching* G.R. No. 177150, November 22, 2007, 538 SCRA 117; *People v. Domingo*, G.R. No. 177744, November 23, 2007, 538 SCRA 733; *People v. Ibanez*, G.R. No. 174656, May 11, 2007, 523 SCRA 136.

[15] CA *Rollo*, p. 98.

[16] *Rollo*, pp. 68-69.

Appellant's theory that prior leave of court had been requested because her demurrer was, at the same time, also a motion to defer defense evidence, cannot be sustained. A motion to defer evidence does not constitute a request for leave to file a demurrer to evidence. In fact, such motion indicates that appellant wanted the Trial Court to *consider* the demurrer before proceeding to hear her evidence. Furthermore, there is nothing in appellant's Demurrer from which it can be inferred that appellant was asking the Trial Court permission to move for the dismissal of the case.

Section 15, Rule 119 of the Rules of Criminal Procedure provides:

> Sec. 15. *Demurrer to Evidence*. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.
>
> If the court denies the motion for dismissal, the accused may adduce evidence in his defense. ***When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution***. (Emphasis supplied.)

Clearly, when the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. In such a case, the waiver of the right to present defense evidence is unqualified.

Unavoidably, Our attention is drawn to the apparent negligence of appellant's counsel in failing to secure prior leave of court before filing her Demurrer to Evidence. However, We cannot lose sight of the fact that in law, the negligence of appellant's counsel binds her. Indeed, jurisprudence teems with pronouncements that a client is bound by the conduct, negligence and mistakes of his counsel.

The CA did not thereby err.

The rule in point is Section 15, Rule 119, of the *Revised Rules of Court, viz*:

Section 15. *Demurrer to evidence*. – After the prosecution has rested its case, the court may dismiss the case on the ground of

insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. **When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution**. (n)

Under the rule, the RTC properly declared the accused to have waived her right to present evidence because she did not obtain the express leave of court for her demurrer to evidence, thereby reflecting her voluntary and knowing waiver of her right to present evidence. The RTC did not need to inquire into the voluntariness and intelligence of the waiver, for her opting to file her demurrer to evidence without first obtaining express leave of court effectively waived her right to present her evidence.

It is true that the Court has frequently deemed the failure of the trial courts to conduct an inquiry into the voluntariness and intelligence of the waiver to be a sufficient cause to remand cases to the trial courts for the purpose of ascertaining whether the accused truly intended to waive their constitutional right to be heard, and whether they understood the consequences of their waivers.[17] In *People v. Bodoso,*[18] a prosecution for a capital offense, we leaned towards the protection of the accused's constitutional right to due process by outlining the proper steps to be taken before deeming the right to present evidence as waived, thus:

Henceforth, to protect the constitutional right to due process of every accused in a *capital offense* and to avoid any confusion about the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and be heard, it shall be the unequivocal duty of

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[17] *People v. Flores,* G.R. No. 106581, March 3, 1997, 269 SCRA 62; *De Guzman v. Sandiganbayan,* G.R. No. 103276, April 11, 1996, 256 SCRA 171; *Rivera v. People,* G.R. No. 163996, June 9, 2005, 460 SCRA 85.

[18] G.R. Nos. 149382-149383, March 5, 2003, 398 SCRA 642, 653-654.

the trial court to observe, as a prerequisite to the validity of such waiver, a procedure akin to a "searching inquiry" as specified in *People v. Aranzado* when an accused pleads guilty, particularly –

1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.

2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.

3. During the hearing, it shall be the task of the trial court to –

   a. ask the defense counsel a series of question to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.

   b. inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any, or in default theory, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time to this purpose.

   c. elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.

   d. all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

In passing, trial courts may also abide by the foregoing criminal procedure when the waiver of the right to be present and be heard is made in ***criminal cases involving non-capital offenses***. After all, in whatever action or forum the accused is situated, the waiver that he makes if it is to be binding and effective must still be exhibited in the case records to have been validly undertaken, that is, it was done voluntarily, knowingly and intelligently with sufficient awareness of the relevant circumstances and likely consequences. As a matter of good court practice, the trial court would have to rely upon the most convenient, if not primary, evidence of the validity of the waiver which would amount to the same thing as showing its adherence to the step-by-step process outlined above.

Also, in *Rivera v. People,*[19] which involved an accused charged with a non-capital offense who filed a demurrer to evidence without leave of court, the Court, citing *People v. Bodoso, supra,* remanded the case to the Sandiganbayan for further proceedings upon finding that the accused had not been asked whether he had understood the consequences of filing the demurrer to evidence without leave of court.

Yet, the accused cannot be extended the benefit of *People v. Bodoso* and *Rivera v. People*. The factual milieus that warranted the safeguards in said criminal cases had nothing in common with the factual milieu in which the RTC deemed the herein accused to have waived her right to present evidence. The accused in *People v. Bodoso*, without filing a demurrer to evidence, expressly waived the right to present evidence. The Court felt that the trial court ought to have followed the steps outlined therein. The accused in *Rivera v. People* filed a demurrer to evidence without having to obtain an express leave of court, considering that the Sandiganbayan itself had told him to file the demurrer to evidence. Thus, after the demurrer to evidence was denied, the accused was held to be still entitled to present his evidence.

The accused and her counsel should not have ignored the potentially prejudicial consequence of the filing of a demurrer to evidence without the leave of court required in Section 15,

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[19] *Supra,* note 17.

Rule 119, of the *Revised Rules of Court.*[20] They were well aware of the risk of a denial of the demurrer being high, for by demurring the accused impliedly admitted the facts adduced by the State and the proper inferences therefrom.[21] We cannot step in now to alleviate her self-inflicted plight, for which she had no one to blame but herself; otherwise, we may unduly diminish the essence of the rule that gave her the alternative option to waive presenting her own evidence.

4.
Petitioner's handwritten letter is admissible in evidence

The next issue concerns the admissibility of the accused's letter dated January 4, 1996 to Prudential Bank's President explaining the shortage of her dollar collection as bank teller,[22] the relevant portion of which follows:

> xxx Sometime in the month of September, a man approached me at my counter and handed me a note demanding me *(sic)* to give him a big amount of money of ₱600,000. I looked at him and told him I don't have any. He told me to get at my drawer and not to tell anybody because their companions are at the nearby of my house *(sic)* and threatened me that something will happened *(sic)* to my kids. That time he looked back and I also saw another man w/ radio at his waist, who stood up and went out. I nervously handed him the money. While doing this, I tried to pull the alarm at my counter but it was out of order. This alarm was out of order for quite sometime but I was still hoping it might work. Since that day, time and again, he kept on coming back and I could'nt do anything but to give in to his request. His second, he demanded for *(sic)* another ₱600,000

[20] Section 15. *Demurrer to evidence*. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (n)

[21] See *Mansfield v. Reserve Oil Co.*, 29 P.2d 491, 492, 38 NM 187.

[22] Folder of Exhibits, pp. 41-42.

but I gave him only ₱530,000. The 3rd & 4th was ₱550,000 each. Last December 29, 1995 at around 3:00 pm, I was surprised to see him at my counter, again, he was asking for money. I was balancing my dollar transaction. But that time, I had delivered my peso cash box to our cashier. He saw the bundle of $10,000 which was on top of my desk because I was writing the breakdown on my cash count. He wanted me to give it to him & this time he pointed a gun at me and I got so nervous & gave him the dollars.

During this time, in order for me to be balance with (sic) my transactions, I cash out checks (suppose to be for late deposit) & included them in today's clearing. The following day, I validated the deposit slips as cash deposit xxx.

The accused submits that the letter was inadmissible for being in reality an uncounselled extrajudicial confession, and for not being executed under oath.

The submission lacks persuasion.

The letter was not an extrajudicial confession whose validity depended on its being executed with the assistance of counsel and its being under oath, but a voluntary party admission under Section 26,[23] Rule 130 of the *Rules of Court* that was admissible against her. An admission, if voluntary, is admissible against the admitter for the reason that it is fair to presume that the admission corresponds with the truth, and it is the admitter's fault if the admission does not.[24] By virtue of its being made by the party himself, an admission is competent primary evidence against the admitter.[25]

Worth pointing out is that the letter was not a confession due to its not expressly acknowledging the guilt of the accused for qualified theft. Under Section 30,[26] Rule 130 of the *Rules of*

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[23] Section 26. *Admissions of a party*. – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (22)

[24] *United States v. Ching Po*, 23 Phil. 578.

[25] Regalado, *Remedial Law Compendium*, 2001 Edition, p. 620.

[26] Section 33. *Confession*. – The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him. (29a)

Court, a confession is a declaration of an accused acknowledging guilt for the offense charged, or for any offense necessarily included therein.

Nonetheless, there was no need for a counsel to have assisted the accused when she wrote the letter because she spontaneously made it while not under custodial investigation. Her insistence on the assistance of a counsel might be valid and better appreciated had she made the letter while under arrest, or during custodial investigation, or under coercion by the investigating authorities of the Government. The distinction of her situation from that of a person arrested or detained and under custodial investigation for the commission of an offense derived from the clear intent of insulating the latter from police coercion or intimidation underlying Section 12 of Article III (*Bill of Rights*) of the 1987 Constitution, which provides:

> Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
>
> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

To reiterate, the rights under Section 12, *supra,* are available to "any person under investigation for the commission of an offense." The phrase does not cover all kinds of investigations, but contemplates only a situation wherein "*a person is already*

in custody as a suspect, or if the person is the suspect, even if he is not yet deprived in any significant way of his liberty."[27] The situation of the accused was not similar to that of a person already in custody as a suspect, or if the person is the suspect, even if she is not yet deprived in any significant way of his liberty.

5.
Penalty was correctly determined

We quote and adopt with approval the CA's discourse on why the penalty of *reclusion perpetua* was appropriate for the offense committed by the accused, to wit:

> The foregoing considered, appellant's conviction must perforce be affirmed. The sentence imposed by the Trial Court should, however, be modified.
>
> The Trial Court sentenced the appellant to imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. The correct penalty, however, should be *reclusion perpetua* with the accessory penalties of death under Article 40 of the Revised Penal Code.
>
> Article 310 of the Revised Penal Code provides that qualified theft shall be punished by the penalties next higher by two degrees than those specified in Article 309 of the Revised Penal Code. Paragraph (1) of Article 309 states that if the value of the thing stolen exceeds ₱22,000, the penalty shall be the maximum period of *prision mayor* in its minimum and medium periods, and one year for each ₱10,000.00 in excess of ₱22,000.00, but the total of the penalty which may be imposed shall not exceed twenty years (or *reclusion temporal*).
>
> Appellant stole US$10,000.00 or ₱262,140.00 computed based on the exchange rate on December 29, 1995 when the appropriation took place.
>
> Under Article 309, the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in the maximum period since the amount stolen exceeded ₱22,000.00. To determine the

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[27] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 Ed., p. 413.

additional years of imprisonment prescribed in Article 309 (1), the amount of ₱22,000.00 should be deducted from ₱262,140.00, thus, leaving the amount of ₱240,140.00. The net amount should then be divided by ₱10,000.00, disregarding any amount below ₱10,000.00. The result is the incremental penalty of twenty-four (24) years which must then be added to the basic penalty of the maximum period of *prision mayor* minimum and medium periods. The penalty of *prision mayor* in its minimum and medium periods has a range of six years (6) and one (1) day to ten (10) years. Its maximum period is eight (8) years, eight (8) months and one (1) day to ten (10) years, and the incremental penalty is twenty-four (24) years. Had appellant committed simple theft, the penalty should have been twenty years of *reclusion temporal,* the maximum penalty allowable under Article 309, subject to the Indeterminate Sentence Law.

Considering that the theft is qualified by grave abuse of confidence, the penalty is two degrees higher than that specified under Article 309. Under Article 25 of the Revised Penal Code, two degrees higher than *reclusion temporal* is death. However, Article 74 of the same Code provides that in cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, and if such higher penalty should be that of death, the same penalty and the accessory penalties of Article 40, shall be considered as the next higher penalty.

The Supreme Court held that in such a case, the accused should be meted the penalty of *reclusion perpetua* for forty years with the accessory penalties of death under Article 40 of the Revised Penal Code.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision promulgated on July 31, 2003 in CA-G.R. CR No. 24556.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169575. March 30, 2011]

IMELDA PANTOLLANO (for herself as surviving spouse and in behalf of her 4 children Honeyvette, Tierra Bryn, Kienne Dionnes, Sherra Veda Mae, then all minors, with deceased seaman VEDASTO PANTOLLANO), *petitioner, vs.* **KORPHIL SHIPMANAGEMENT AND MANNING CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT AGENCY (POEA); THE DEATH OF A SEAMAN DURING THE TERM OF EMPLOYMENT MAKES THE EMPLOYER LIABLE TO HIS HEIRS FOR DEATH COMPENSATION BENEFITS; APPLICATION IN CASE AT BAR.— In *Medline Management, Inc. v. Roslinda,* we declared that "in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable." In this case, there is no dispute that Vedasto went missing on August 2, 1994, during the effectivity of his employment contract. Thus, his beneficiaries are entitled to the death benefits under the POEA Standard Employment Contract for Seafarers, Section 20. x x x Thus, upon the death of Vedasto, his heirs, specifically Imelda and their four children, are entitled to US$50,000.00 as well as US$7,000.00 for each child under the age of 21. The status of Imelda and her four children as the legitimate beneficiaries of Vedasto was never questioned.

2. CIVIL LAW; DOCTRINE OF ESTOPPEL; DEFINED AND CONSTRUED.— "Under the doctrine of 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. A party may not go back on his own acts and

representations to the prejudice of the other party who relied upon them. In the law of evidence, whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

3. ID.; ABSENCE; PRESUMPTION OF DEATH; WHEN DECLARED MISSING, A PERSON IS PRESUMED DEAD ONLY AFTER THE LAPSE OF FOUR YEARS FROM SUCH DECLARATION; FILING OF CLAIMS WAS TIMELY DONE IN CASE AT BAR.— A person missing under the circumstances as those of Vedasto may not legally be considered as dead until the lapse of the period fixed by law on presumption of death, and consequently Imelda cannot yet be considered as a widow entitled to compensation under the law. On August 2, 1994, when Vedasto was reported missing, Imelda cannot as yet file her claim for death benefits as it is still premature. The provisions of Article 391 of the Civil Code therefore become relevant. x x x With the known facts, namely, that Vedasto was lost or missing while M/V Couper was navigating the open sea, there is no doubt that he could have been in danger of death. Paragraph (3) of Article 391 of the Civil Code will then be applicable in this case. Thus, Vedasto can only be presumed dead after the lapse of four years from August 2, 1994 when he was declared missing. But of course, evidence must be shown that Vedasto has not been heard of for four years or thereafter. This is the case here. Vedasto is presumed legally dead only on August 2, 1998. It is only at this time that the rights of his heirs to file their claim for death benefits accrued. Having already established that Imelda's cause of action accrued on August 2, 1998, it follows that her claim filed on May 29, 2000 was timely. It was filed within three years from the time the cause of action accrued pursuant to Article 291 of the Labor Code. Hence, Imelda and her children are entitled to the payment of said compensation.

APPEARANCES OF COUNSEL

Miguel T. Florendo for petitioner.
Del Rosario and Del Rosario for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The heirs of a missing seaman may file their claim for death compensation benefits within the three-year period fixed by law from the time the seaman has been presumed dead.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated June 30, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 78759, which granted the petition for *certiorari* and reversed and set aside the Resolutions dated May 30, 2003[3] and July 31, 2003[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CASE No. OFW (M) 2000-05-00302-30 (NLRC NCR CA No. 031095-02).

Factual Antecedents

Korphil Shipmanagement and Manning Corporation (Korphil) is a domestic corporation engaged in the recruitment of seafarers for its foreign principals. On March 24, 1994, it hired Vedasto C. Pantollano (Vedasto) as 4th Engineer on board the vessel M/V Couper under a Philippine Overseas Employment Agency (POEA) approved contract[5] of employment, with the following terms and conditions:

Duration of Contract	:	12 months
Position	:	Fourth Engineer
Basic Monthly Salary	:	USD 550.00
Hours of Work	:	48 hours per week
Overtime	:	USD 165.00
Vacation Leave With Pay	:	3 days/month

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[1] *Rollo*, pp. 23-48.

[2] CA *rollo*, pp. 291-300; penned by Presiding Justice Romeo A. Brawner and concurred in by Associate Justices Edgardo P. Cruz and Jose C. Mendoza

[3] *Id.* at 157-162.

[4] *Id.* at 175-176.

[5] *Id.* at 194.

On August 2, 1994, at about 6:45 A.M., Vedasto was seen by Messman Nolito L. Tarnate (Messman Nolito) to be in deep thought, counting other vessels passing by and talking to himself. At about 8:15 A.M., the Chief Engineer of the vessel reported to the Master of the vessel, Mr. Kim Jong Chul, that Vedasto did not show up for his duty. The Master of the vessel thus ordered all personnel on stand by. The vessel then altered its course to search for Vedasto. Some crew members were tasked to search the vessel while others were assigned to focus their search on the open sea to locate and rescue Vedasto. Assistance from other vessels was also requested. The search and rescue operation lasted for about six hours, but Vedasto was not found. On August 3, 1994, a Report[6] was issued by the Master of M/V Couper declaring that Vedasto was missing. His wife, Imelda Pantollano (Imelda), was likewise informed about the disappearance of Vedasto while onboard M/V Couper. Since then, Vedasto was never seen again.

On May 29, 2000, Imelda filed a complaint[7] before the NLRC where she sought to recover death benefits, damages and attorney's fees.

Ruling of the Labor Arbiter

On January 31, 2002, Labor Arbiter Renaldo O. Hernandez rendered a Decision[8] holding that the legal heirs of Vedasto are entitled to the payment of death benefits and attorney's fees. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, judgment is entered finding respondents liable for the claimed death benefits to complainant-in-representation thus ORDERING respondent['s] principal and local manning agent, along with the latter's corporate officers and directors, jointly and severally:
>
> 1. [T]o pay to the deceased complainant's legal heirs/ beneficiaries Imelda Pantollano and their four minor children, *viz.*,

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[6] *Id.* at 195.

[7] *Rollo*, p. 73

[8] CA *rollo*, pp. 42-49.

Honeyvette L. Pantollano born 10/30/81, Tierra Bryn L. Pantollano born 04/17/84, Kienne Dionnes L. Pantollano born 08/29/89, and Sherra Veda Mae L. Pantollano born 11/21/90, death benefits under the POEA Rules and Regulations of US$50,000.00 and US$ 28,000.00 (US$7,000.00 each) for the said 4 minor children;

2. [T]o give and/or pay to them the proceeds of seafarer V. Pantollano[']s coverage for Comprehensive Life, Health, Medical and Disability Insurance with various P and I Clubs for the Owner's Protection and Indemnity against any such claim against all hazards and risks in operating the vessel pursuant to maritime commerce;

3. [To] pay attorney's fees of 10% of the total monetary amount awarded.

Other claims of complainant-in-representation are denied for lack of merit.

SO ORDERED.[9]

Ruling of the National Labor Relations Commission

Korphil sought recourse to the NLRC by submitting its Notice of Appeal[10] With Memorandum of Appeal on March 6, 2002. On June 7, 2002, Korphil filed a Supplemental Appeal[11] to their Memorandum of Appeal.

On July 31, 2002, the NLRC issued a Resolution[12] reversing and setting aside the January 31, 2002 Decision of the Labor Arbiter. According to the NLRC, the death of Vedasto which was clearly shown by evidence to be a case of suicide was not compensable under the clear provisions of the POEA Standard Employment Contract.

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[9] *Id.* at 48-49.

[10] *Id.* at 50-77.

[11] *Id.* at 101-110.

[12] *Id.* at 111-119. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the Appeal is GRANTED. Accordingly, the Decision appealed from is REVERSED and SET ASIDE and a new one entered dismissing the instant case for lack of merit.

SO ORDERED. (*Id.* at 118.)

Imelda filed a Motion for Reconsideration[13] which was opposed by Korphil.[14]

In a Resolution[15] dated May 30, 2003, the NLRC reversed its July 31, 2002 Resolution and reinstated the January 31, 2002 Decision of the Labor Arbiter.

Korphil filed a Motion for Reconsideration[16] which was denied by the NLRC through its Resolution[17] dated July 31, 2003.

Ruling of the Court of Appeals

Aggrieved, Korphil filed with the CA a Petition for *Certiorari*.[18] On October 10, 2003, Imelda filed her Comment.[19] Korphil did not file its reply and so the CA in a Resolution[20] dated December 4, 2003 deemed that it had waived the right to file its reply. The CA directed the parties to submit their respective memoranda and then the case was declared submitted for decision.

On June 30, 2005, the CA issued its assailed Decision which granted the petition, reversed and set aside the May 30, 2003 Resolution of the NLRC, and dismissed the case for lack of merit. It held that under Article 291 of the Labor Code, Imelda should have filed her complaint within three years from the time the cause of action accrued. Thus, Imelda should have filed her complaint within three years from Vedasto's disappearance on August 2, 1994. Having filed her complaint only on May 29, 2000, the same is already barred by prescription.

Imelda moved for reconsideration[21] but to no avail. Hence, this appeal ascribing upon the CA the following errors:

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[13] *Id.* at 120-140.

[14] *Id.* at 141-156.

[15] *Id.* at 157-162.

[16] *Id.* at 163-174.

[17] *Id.* at 175-176.

[18] *Id.* at 2-41.

[19] *Id.* at 234-259.

[20] *Id.* at 260.

[21] *Id.* at 303-311.

1. The Honorable Court of Appeals erred in law when it held that Art. 291 of the x x x Civil Code [applies] only in case of settlement of estates, not in the claim for death compensation benefits under the Labor Code.

2. The Honorable Court of Appeals erred in law when it applied as precedent the case of *Caltex (Phils.) Inc. vs. Cristela Villanueva,* G.R. No. L-15658, August 21, 1961.

3. Assuming arguendo that Art. 391 of the x x x Civil Code does not apply, the Honorable Court of Appeals erred in law in refusing to apply the rule on estoppel against the respondent company, thereby giving premium on the respondent's deception of invoking prematurity when the petitioner timely demanded her death compensation benefits but then raised the defense of prescription when she reiterated her claim after waiting for the lapse of four (4) years as earlier advised by the respondent company.[22]

The above issues boil down to a single issue of whether the claim of Imelda for death compensation benefits filed on May 29, 2000, or more than five years from the time her husband Vedasto was reported missing on August 2, 1994, is already barred by prescription following the provisions of Article 291 of the Labor Code.

Imelda's Arguments

Imelda contends that her claim was not yet barred by prescription when she filed it on May 29, 2000. She avers that when she went to the office of Korphil to claim the death benefits due to the heirs of her husband, Korphil advised her that it was still premature and that she has to wait for the lapse of four years before her husband Vedasto could be declared dead. This is in accordance with the provisions of Article 391 of the Civil Code.

However, when she came back after four years, she was told that her claim has already prescribed pursuant to Article 291 of the Labor Code. Imelda asserts that Korphil is, therefore, estopped from interposing the defense of prescription in this

[22] *Rollo*, p. 36.

case as it was Korphil itself which advised her to wait for at least four years before filing the claim for death benefits. However, the CA ignored this very material fact albeit conspicuously discussed as one of Imelda's arguments.

Imelda further contends that the CA erred when it held that Article 391 of the Civil Code applies only in cases of settlement of estates, and not to cases of death compensation claims as in this case.

Korphil's Arguments

Korphil, on the other hand, argues that prescription of actions for money claims arising from employer-employee relationship is governed by Article 291 of the Labor Code. The three-year prescriptive period referred to in Article 291 shall commence to run from the time the cause of action accrued.

According to Korphil, the unexplained disappearance on August 2, 1994 of Vedasto occurred on the high seas where there is inherent impossibility for him to leave the ship. The fact that he could not be found dead or alive despite best efforts of all the crew members and the other vessels which responded to the distress call, and the failure of Imelda to establish that Vedasto is still alive are more than substantial proofs to establish that the latter died on August 2, 1994. Therefore, prescription should be reckoned from this date which is considered as the time of death of Vedasto. It is also at this point that the obligation of Korphil to pay death compensation can be demanded as a matter of right by the heirs of Vedasto.

Korphil posits that since Imelda filed only on May 29, 2000, or almost five years and ten months from August 2, 1994, her claim to recover death benefits, damages, and attorney's fees is, therefore, already barred by the three-year prescriptive period under Article 291 of the Labor Code.

Our Ruling

The petition is impressed with merit.

In *Medline Management, Inc. v. Roslinda*,[23] we declared that "in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable."

In this case, there is no dispute that Vedasto went missing on August 2, 1994, during the effectivity of his employment contract. Thus, his beneficiaries are entitled to the death benefits under the POEA Standard Employment Contract for Seafarers, Section 20 of which states:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

In the case of work-related death of the seafarer during the term of his contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$ 50,000) and an additional amount of Seven Thousand US dollars (US$ 7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x x x x x x

Thus, upon the death of Vedasto, his heirs, specifically Imelda and their four children, are entitled to US$50,000.00 as well as US$7,000.00 for each child under the age of 21. The status of Imelda and her four children as the legitimate beneficiaries of Vedasto was never questioned. The only issue raised by Korphil was the prescription of their claim.

Korphil is estopped from asserting that the reckoning point for prescription to set in is August 2, 1994.

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[23] G.R. No. 168715, September 15, 2010, citing *Southeastern Shipping v. Navarra, Jr.*, G.R. No. 167678, June 22, 2010 and *Prudential Shipping and Management Corporation v. Sta. Rita*, G.R. No. 166580, February 8, 2007, 515 SCRA 157, 168.

Preliminarily, it must be stressed that Korphil is estopped from asserting that Imelda's cause of action accrued on August 2, 1994. Korphil could not deny the fact that it is a party to another case filed by Gliceria P. Echavez (Gliceria), the mother of Vedasto. In this case, Gliceria claimed death benefits due to the death of her son Vedasto. In a Decision[24] dated October 15, 1997, Labor Arbiter Dominador A. Almirante ruled that the claim was prematurely filed and hence it must be dismissed without prejudice to the re-filing of the same at the right time. The case was re-filed on August 26, 1998. In a decision[25] dated February 22, 1999, Labor Arbiter Almirante ruled that Korphil is liable for the payment of death benefits to Gliceria. Korphil appealed to the NLRC. On November 19, 1999, the NLRC rendered its Decision[26] which dismissed the appeal and affirmed the Labor Arbiter's Decision.

Korphil filed with the CA a petition for *certiorari*[27] which was docketed as CA-G.R. SP No. 58933. In the said petition, Korphil advanced the following arguments:

> Inasmuch as the missing seaman's death cannot be proven, Mr. Pantollano cannot be presumed dead right away considering that the New Civil Code as well as the Rules of Court provide for a specific rule before a missing person can be properly presumed dead. We shall quote in full the said provision as follows:
>
> > After an absence of seven (7) years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.
>
> x x x x x x x x x
>
> Considering that Mr. Pantollano has been absent only for less than six (6) years, his death cannot be legally presumed. If Mr. Pantollano cannot be considered to have died at the time of his disappearance or cannot be legally presumed dead as of the present

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[24] *Rollo*, pp. 74-77.

[25] *Id.* at 104-108.

[26] *Id.* at 109-113.

[27] *Id.* at 78-103.

time by virtue of Article 390 of the Civil Code, public respondent NLRC cannot successfully apply the provision of Section 20 (A) (1) of the POEA Standard Employment Contract because the death of Mr. Pantollano indeed had never occurred. Even [if] a perspicacious, thorough and exhaustive perusal is made on the pertinent provisions of the POEA Standard Employment Contract, this Honorable Court cannot find a provision which gives death compensation to a seafarer who had just disappeared or was merely declared as missing.

In view of the fact that the death of the seaman was not duly proven and the period within which the missing seaman can be lawfully presumed dead has not been complied with, it becomes clear that public respondent NLRC indeed committed serious error when it affirmed the Decision of the Labor Arbiter awarding death compensation to private respondent.[28]

The CA dismissed the claim of Gliceria because the natural mother is not the beneficiary contemplated by law notwithstanding the fact that she was designated by her deceased son as the sole allottee and beneficiary. If there is any party entitled to the death compensation benefits, it is Vedasto's surviving spouse and children and not her mother.

Gliceria thus filed a petition for review with this Court which was docketed as G.R. No. 157424. In a Resolution dated August 6, 2003, the Court denied the same for the failure of Gliceria to file the appeal within the extended period in accordance with Section 2, Rule 45 of the Rules of Court and for her failure to properly verify the petition in accordance with Section 1, Rule 45 in relation to Section 4, Rule 7, since the verification is based on affiant's personal knowledge, information and belief, as a consequence of which the petition was treated as an unsigned pleading which under Section 3, Rule 7, produces no legal effect.

But what is obvious is that in the earlier claim for compensation benefits filed by Gliceria, who wanted to arrogate unto herself the said benefits, Korphil was claiming that it was still premature because the death of Vedasto was not yet duly proven and the

[28] *Id.* at 87.

period that must elapse before a seaman can be lawfully presumed dead has not been complied with. Consequently, Korphil is estopped from insisting in this later case filed by Imelda that Vedasto should be considered dead from the time he went missing on August 2, 1994 and therefore the claim was filed beyond the allowable period of three years.

This Court is mindful of the fact that as soon as Imelda came to know about the missing status of her husband on August 2, 1994, she went to Korphil to file her claim for the payment of death benefits. However, the latter informed her that it was still premature to claim the same and advised her instead to wait four more years before her husband could be presumed dead thereby entitling his heirs to death benefits. Korphil is therefore guilty of estoppel.

"Under the doctrine of 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. A party may not go back on his own acts and representations to the prejudice of the other party who relied upon them. In the law of evidence, whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."[29]

Imelda's cause of action accrued only on August 2, 1998 and not on August 2, 1994.

According to Korphil, Article 291 of the Labor Code is applicable in this case as it provides:

ART. 291. *Money Claims*. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

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[29] *Philippine Savings Bank v. Chowking Food Corporation*, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 328.

x x x x x x x x x

Korphil posits that the three-year prescriptive period referred to in Article 291 shall commence to run from the time the cause of action accrued, *i.e.*, at the time Vedasto died on August 2, 1994. Hence, when Imelda filed her claim on May 29, 2000, the same has already prescribed.

We are not persuaded. On August 2, 1994, it cannot as yet be presumed that Vedasto is already dead. "The boat was not lost. This opens up a number of possibilities. x x x [N]othing is certain. Nobody knows what has happened to him. He could have transferred to another vessel or watercraft. He could even have swum to safety. Or he could have died. Or worse, he could have taken his own life. Legal implications – such as right to compensation, succession, the legal status of the wife – are so important that courts should not so easily be carried to the conclusion that the man is dead. The result is that death cannot be taken as a fact."[30]

A person missing under the circumstances as those of Vedasto may not legally be considered as dead until the lapse of the period fixed by law on presumption of death, and consequently Imelda cannot yet be considered as a widow entitled to compensation under the law.

On August 2, 1994, when Vedasto was reported missing, Imelda cannot as yet file her claim for death benefits as it is still premature. The provisions of Article 391 of the Civil Code therefore become relevant, to wit:

> The following shall be presumed dead for all purposes, including the division of the estate among the heirs;
>
> (1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;
>
> (2) A person in the armed forces who has taken part in war, and has been missing for four years;

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[30] *Aboitiz Shipping Corporation v. Pepito*, 125 Phil. 197, 200-201 (1966).

(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years. (Emphasis supplied.)

With the known facts, namely, that Vedasto was lost or missing while M/V Couper was navigating the open sea, there is no doubt that he could have been in danger of death. Paragraph (3) of Article 391 of the Civil Code will then be applicable in this case. Thus, Vedasto can only be presumed dead after the lapse of four years from August 2, 1994 when he was declared missing. But of course, evidence must be shown that Vedasto has not been heard of for four years or thereafter. This is the case here.

Vedasto is presumed legally dead only on August 2, 1998. It is only at this time that the rights of his heirs to file their claim for death benefits accrued.

Korphil then further argued that although Vedasto was declared dead only on August 2, 1998, his death should be considered on the very day of the occurrence of the event from which death is presumed. Thus, the death of Vedasto should retroact to August 2, 1994. The three-year prescriptive period under Article 291 of the Labor Code will therefore be reckoned on August 2, 1994.

We do not agree.

If we allow such an argument, then no claim for death compensation benefits under this circumstance will ever prosper. This is so because the heirs of a missing seaman have to wait for four years as provided under Article 391 of the Civil Code before the seaman is declared as legally dead. After four years, the prescriptive period for filing money claims under Article 291 of the Labor Code would, obviously, lapse. This scenario could not have been the intention of the legislature in enacting a social legislation, such as the Labor Code.

Imelda's claim for death compensation benefits was filed on time.

Having already established that Imelda's cause of action accrued on August 2, 1998, it follows that her claim filed on May 29, 2000 was timely. It was filed within three years from the time the cause of action accrued pursuant to Article 291 of the Labor Code. Hence, Imelda and her children are entitled to the payment of said compensation.

WHEREFORE, the instant petition for review on *certiorari* is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 78759 dated May 30, 2005, is *SET ASIDE* and the May 30, 2003 Resolution of the NLRC is *REINSTATED and AFFIRMED.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169766. March 30, 2011]

ESTRELLITA JULIANO-LLAVE, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, HAJA PUTRI ZORAYDA A. TAMANO and ADIB AHMAD A. TAMANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION FOR *CERTIORARI* DOES NOT SUSPEND THE PROCEEDINGS BEFORE THE TRIAL COURT; APPLICATION IN CASE AT BAR.— The pendency of a petition for *certiorari* does not suspend the proceedings before the trial court. "An application for *certiorari* is an independent action which is not part or a continuation of the

trial which resulted in the rendition of the judgment complained of." Rule 65 of the Rules of Court is explicit in stating that "[t]he petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case."

2. CIVIL LAW; MARRIAGE; DECLARATION OF ABSOLUTE NULLITY OF A VOID MARRIAGE; LACK OF PARTICIPATION OF A PUBLIC PROSECUTOR DOES NOT INVALIDATE THE PROCEEDINGS IN THE TRIAL COURT; SUSTAINED.— Aside from Article 48 of the Family Code and Rule 9, Section 3(e) of the Rules of Court, the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) also requires the participation of the public prosecutor in cases involving void marriages. It specifically mandates the prosecutor to submit his investigation report to determine whether there is collusion between the parties. x x x Records show that the trial court immediately directed the public prosecutor to submit the required report, which we find to have been sufficiently complied with by Assistant City Prosecutor Edgardo T. Paragua in his Manifestation dated March 30, 1995, wherein he attested that there could be no collusion between the parties and no fabrication of evidence because Estrellita is not the spouse of any of the private respondents. Furthermore, the lack of collusion is evident in the case at bar. Even assuming that there is a lack of report of collusion or a lack of participation by the public prosecutor, just as we held in *Tuason v. Court of Appeals*, the lack of participation of a fiscal does not invalidate the proceedings in the trial court: The role of the prosecuting attorney or fiscal in annulment of marriage and legal separation proceedings is to determine whether collusion exists between the parties and to take care that the evidence is not suppressed or fabricated. Petitioner's vehement opposition to the annulment proceedings negates the conclusion that collusion existed between the parties. There is no allegation by the petitioner that evidence was suppressed or fabricated by any of the parties. Under these circumstances, we are convinced that the non-intervention of a prosecuting attorney to assure lack of collusion between the contending parties is not fatal to the validity of the proceedings in the trial court.

3. ID.; ID.; THE CIVIL CODE GOVERNS THE MARRIAGE OF ZORAYDA AND THE LATE SEN. MAMINTAL TAMANO, THEIR MARRIAGE WAS NEVER INVALIDATED BY THE PASSAGE OF PD 1083 OR THE CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES; EFFECT THEREOF, EXPLAINED.— The marriage between the late Sen. Tamano and Zorayda was celebrated in 1958, solemnized under civil and Muslim rites. The only law in force governing marriage relationships between Muslims and non-Muslims alike was the Civil Code of 1950, under the provisions of which only one marriage can exist at any given time. Under the marriage provisions of the Civil Code, divorce is not recognized except during the effectivity of Republic Act No. 394 which was not availed of during its effectivity. As far as Estrellita is concerned, Sen. Tamano's prior marriage to Zorayda has been severed by way of divorce under PD 1083, the law that codified Muslim personal laws. However, PD 1083 cannot benefit Estrellita. Firstly, Article 13(1) thereof provides that the law applies to "marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines." But we already ruled in G.R. No. 126603 that "Article 13 of PD 1083 does not provide for a situation where the parties were married both in civil and Muslim rites." Moreover, the Muslim Code took effect only on February 4, 1977, and this law cannot retroactively override the Civil Code which already bestowed certain rights on the marriage of Sen. Tamano and Zorayda. The former explicitly provided for the prospective application of its provisions unless otherwise provided: x x x An instance of retroactive application of the Muslim Code is Article 186(2) which states: A marriage contracted by a Muslim male prior to the effectivity of this Code in accordance with non-Muslim law shall be considered as one contracted under Muslim law provided the spouses register their mutual desire to this effect. Even granting that there was registration of mutual consent for the marriage to be considered as one contracted under the Muslim law, the registration of mutual consent between Zorayda and Sen. Tamano will still be ineffective, as both are Muslims whose marriage was celebrated under both civil and Muslim laws. Besides, as we have already settled, the Civil Code governs their personal status since this was in effect at the time of the

celebration of their marriage. In view of Sen. Tamano's prior marriage which subsisted at the time Estrellita married him, their subsequent marriage is correctly adjudged by the CA as void *ab initio*.

4. ID.; ID.; PARTY TO FILE THE CASE FOR THE DECLARATION OF NULLITY OF A SUBSEQUENT MARRIAGE; WHEN ONE OF THE CHILDREN OF THE DECEASED WHO HAS PROPERTY RIGHTS AS AN HEIR IS CONSIDERED A REAL PARTY IN INTEREST; ***RATIONALE*.—** The subsequent spouse may only be expected to take action if he or she had only discovered during the connubial period that the marriage was bigamous, and especially if the conjugal bliss had already vanished. Should parties in a subsequent marriage benefit from the bigamous marriage, it would not be expected that they would file an action to declare the marriage void and thus, in such circumstance, the "injured spouse" who should be given a legal remedy is the one in a subsisting previous marriage. The latter is clearly the aggrieved party as the bigamous marriage not only threatens the financial and the property ownership aspect of the prior marriage but most of all, it causes an emotional burden to the prior spouse. The subsequent marriage will always be a reminder of the infidelity of the spouse and the disregard of the prior marriage which sanctity is protected by the Constitution. Indeed, Section 2(a) of A.M. No. 02-11-10-SC precludes the son from impugning the subsequent marriage. But in the case at bar, both Zorayda and Adib have legal personalities to file an action for nullity. Albeit the Supreme Court Resolution governs marriages celebrated under the Family Code, such is prospective in application and does not apply to cases already commenced before March 15, 2003. Zorayda and Adib filed the case for declaration of nullity of Estrellita's marriage in November 1994. While the Family Code is silent with respect to the proper party who can file a petition for declaration of nullity of marriage prior to A.M. No. 02-11-10-SC, it has been held that in a void marriage, in which no marriage has taken place and cannot be the source of rights, any interested party may attack the marriage directly or collaterally without prescription, which may be filed even beyond the lifetime of the parties to the marriage. Since A.M. No. 02-11-10-SC does not apply, Adib, as one of the children of the deceased who has property rights as an heir, is

likewise considered to be the real party in interest in the suit he and his mother had filed since both of them stand to be benefited or injured by the judgment in the suit. Since our Philippine laws protect the marital union of a couple, they should be interpreted in a way that would preserve their respective rights which include striking down bigamous marriages. We thus find the CA Decision correctly rendered.

APPEARANCES OF COUNSEL

Laura Love Peñaranda-Guevarra for petitioner.
Carmina S. Abbas for private respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A new law ought to affect the future, not what is past. Hence, in the case of subsequent marriage laws, no vested rights shall be impaired that pertain to the protection of the legitimate union of a married couple.

This petition for review on *certiorari* assails the Decision[1] dated August 17, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 61762 and its subsequent Resolution[2] dated September 13, 2005, which affirmed the Decision of the Regional Trial Court (RTC) of Quezon City, Branch 89 declaring petitioner Estrellita Juliano-Llave's (Estrellita) marriage to Sen. Mamintal A.J. Tamano (Sen. Tamano) as void *ab initio*.

Factual Antecedents

Around 11 months before his death, Sen. Tamano married Estrellita twice – initially under the Islamic laws and tradition on May 27, 1993 in Cotabato City[3] and, subsequently, under a

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[1] CA *rollo*, pp. 129-142; penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Portia Aliño-Hormachuelos and Rebecca de Guia-Salvador.

[2] *Id.* at 205-210.

[3] Records, p. 103.

civil ceremony officiated by an RTC Judge at Malabang, Lanao del Sur on June 2, 1993.[4] In their marriage contracts, Sen. Tamano's civil status was indicated as 'divorced.'

Since then, Estrellita has been representing herself to the whole world as Sen. Tamano's wife, and upon his death, his widow.

On November 23, 1994, private respondents Haja Putri Zorayda A. Tamano (Zorayda) and her son Adib Ahmad A. Tamano (Adib), in their own behalf and in behalf of the rest of Sen. Tamano's legitimate children with Zorayda,[5] filed a complaint with the RTC of Quezon City for the declaration of nullity of marriage between Estrellita and Sen. Tamano for being bigamous. The complaint[6] alleged, *inter alia*, that Sen. Tamano married Zorayda on May 31, 1958 under civil rites, and that this marriage remained subsisting when he married Estrellita in 1993. The complaint likewise averred that:

> 11. The marriage of the deceased and Complainant Zorayda, having been celebrated under the New Civil Code, is therefore governed by this law. Based on Article 35 (4) of the Family Code, the subsequent marriage entered into by deceased Mamintal with Defendant Llave is void *ab initio* because he contracted the same while his prior marriage to Complainant Zorayda was still subsisting, and his status being declared as "divorced" has no factual or legal basis, because the deceased never divorced Complainant Zorayda in his lifetime, and he could not have validly done so because divorce is not allowed under the New Civil Code;
>
> 11.1 Moreover, the deceased did not and could not have divorced Complainant Zorayda by invoking the provision of P.D. 1083, otherwise known as the Code of Muslim Personal Laws, for the simple reason that the marriage of the deceased with Complainant Zorayda was never deemed, legally and factually, to have been one contracted under Muslim law as provided under Art. 186 (2) of

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[4] *Id.* at 13.

[5] Namely Jamila, Jacob, Amina, Macapanton, Ysmael, Soraya, Adel and Aquil.

[6] *Rollo,* pp. 54-60.

P.D. 1083, since they (deceased and Complainant Zorayda) did not register their mutual desire to be thus covered by this law;[7]

Summons was then served on Estrellita on December 19, 1994. She then asked from the court for an extension of 30 days to file her answer to be counted from January 4, 1995,[8] and again, another 15 days[9] or until February 18, 1995, both of which the court granted.[10]

Instead of submitting her answer, however, Estrellita filed a Motion to Dismiss[11] on February 20, 1995 where she declared that Sen. Tamano and Zorayda are both Muslims who were married under the Muslim rites, as had been averred in the latter's disbarment complaint against Sen. Tamano.[12] Estrellita argued that the RTC has no jurisdiction to take cognizance of the case because under Presidential Decree (PD) No. 1083, or the Code of Muslim Personal Laws of the Philippines (Muslim Code), questions and issues involving Muslim marriages and divorce fall under the exclusive jurisdiction of *shari'a* courts.

The trial court denied Estrellita's motion and asserted its jurisdiction over the case for declaration of nullity.[13] Thus, Estrellita filed in November 1995 a *certiorari* petition with this Court questioning the denial of her Motion to Dismiss. On December 15, 1995, we referred the petition to the CA[14] which was docketed thereat as CA-G.R. SP No. 39656.

During the pendency of CA-G.R. SP No. 39656, the RTC continued to try the case since there can be no default in cases of declaration of nullity of marriage even if the respondent failed

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[7] *Id.* at 57.

[8] Records, pp. 14-15, 25-26.

[9] *Id.* at 25-26.

[10] *Id.* at 17, 29.

[11] *Id.* at 32-38.

[12] *Id.* at 38-40.

[13] *Id.* at 109-111, 123.

[14] *Id.* at 143.

to file an answer. Estrellita was allowed to participate in the trial while her opposing parties presented their evidence. When it was Estrellita's turn to adduce evidence, the hearings set for such purpose[15] were postponed mostly at her instance until the trial court, on March 22, 1996, suspended the proceedings[16] in view of the CA's temporary restraining order issued on February 29, 1996, enjoining it from hearing the case.[17]

Eventually, however, the CA resolved the petition adverse to Estrellita in its Decision dated September 30, 1996.[18] Estrellita then elevated the appellate court's judgment to this Court by way of a petition for review on *certiorari* docketed as G.R. No. 126603.[19]

Subsequent to the promulgation of the CA Decision, the RTC ordered Estrellita to present her evidence on June 26, 1997.[20] As Estrellita was indisposed on that day, the hearing was reset to July 9, 1997.[21] The day before this scheduled hearing, Estrellita again asked for a postponement.[22]

Unhappy with the delays in the resolution of their case, Zorayda and Adib moved to submit the case for decision,[23] reasoning that Estrellita had long been delaying the case. Estrellita opposed, on the ground that she has not yet filed her answer as she still awaits the outcome of G.R. No. 126603.[24]

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[15] *Id.* at 151, 153, 173, 174.

[16] *Id.* at 213.

[17] *Id.* at 176.

[18] *Id.* at 230-236.

[19] *Tamano v. Hon. Ortiz*, 353 Phil. 775 (1998).

[20] Records, p. 237. The trial court erred in stating that 'let reception of plaintiff's evidence herein be set on June 26, 1997 x x x" when in fact, it was already defendant's turn.

[21] *Id.* at 240.

[22] *Id.* at 242-244.

[23] *Id.* at 315-318.

[24] *Id.* at 319-322.

On June 29, 1998, we upheld the jurisdiction of the RTC of Quezon City,[25] stating as one of the reasons that as *shari'a* courts are not vested with original and exclusive jurisdiction in cases of marriages celebrated under both the Civil Code and PD 1083, the RTC, as a court of general jurisdiction, is not precluded from assuming jurisdiction over such cases. In our Resolution dated August 24, 1998,[26] we denied Estrellita's motion for reconsideration[27] with finality.

A few days before this resolution, or on August 18, 1998, the RTC rendered the aforementioned judgment declaring Estrellita's marriage with Sen. Tamano as void *ab initio*.[28]

Ruling of the Regional Trial Court

The RTC, finding that the marital ties of Sen. Tamano and Zorayda were never severed, declared Sen. Tamano's subsequent marriage to Estrellita as void *ab initio* for being bigamous under Article 35 of the Family Code of the Philippines and under Article 83 of the Civil Code of the Philippines.[29] The court said:

A comparison between Exhibits A and B (*supra*) immediately shows that the second marriage of the late Senator with [Estrellita] was

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[25] *Rollo*, pp. 69-76.

[26] Records, p. 367.

[27] *Id.* at 354-362.

[28] *Rollo*, pp. 77-82; penned by Judge Elsa de Guzman.

[29] FAMILY CODE, Article 35. The following marriages shall be void from the beginning:

x x x x x x x x x

(4) Those bigamous or polygamous marriages not falling under Article 41;

x x x x x x x x x

NEW CIVIL CODE, Article 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) The first marriage was annulled or dissolved;

x x x x x x x x x

entered into during the subsistence of his first marriage with [Zorayda]. This renders the subsequent marriage void from the very beginning. The fact that the late Senator declared his civil status as "divorced" will not in any way affect the void character of the second marriage because, in this jurisdiction, divorce obtained by the Filipino spouse is not an acceptable method of terminating the effects of a previous marriage, especially, where the subsequent marriage was solemnized under the Civil Code or Family Code.[30]

Ruling of the Court of Appeals

In her appeal,[31] Estrellita argued that she was denied her right to be heard as the RTC rendered its judgment even without waiting for the finality of the Decision of the Supreme Court in G.R. No. 126603. She claimed that the RTC should have required her to file her answer after the denial of her motion to dismiss. She maintained that Sen. Tamano is capacitated to marry her as his marriage and subsequent divorce with Zorayda is governed by the Muslim Code. Lastly, she highlighted Zorayda's lack of legal standing to question the validity of her marriage to the deceased.

In dismissing the appeal in its Decision dated August 17, 2004,[32] the CA held that Estrellita can no longer be allowed to file her answer as she was given ample opportunity to be heard but simply ignored it by asking for numerous postponements. She never filed her answer despite the lapse of around 60 days, a period longer than what was prescribed by the rules. It also ruled that Estrellita cannot rely on her pending petition for *certiorari* with the higher courts since, as an independent and original action, it does not interrupt the proceedings in the trial court.

As to the substantive merit of the case, the CA adjudged that Estrellita's marriage to Sen. Tamano is void *ab initio* for being bigamous, reasoning that the marriage of Zorayda and Sen.

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[30] *Rollo,* p. 80.

[31] CA *rollo,* pp. 17-41.

[32] *Rollo,* pp. 34-46.

Tamano is governed by the Civil Code, which does not provide for an absolute divorce. It noted that their first nuptial celebration was under civil rites, while the subsequent Muslim celebration was only ceremonial. Zorayda then, according to the CA, had the legal standing to file the action as she is Sen. Tamano's wife and, hence, the injured party in the senator's subsequent bigamous marriage with Estrellita.

In its September 13, 2005 Resolution,[33] the CA denied Estrellita's Motion for Reconsideration/Supplemental Motion for Reconsideration where it debunked the additional errors she raised. The CA noted that the allegation of lack of the public prosecutor's report on the existence of collusion in violation of both Rule 9, Section 3(e) of the Rules of Court[34] and Article 48 of the Family Code[35] will not invalidate the trial court's judgment as the proceedings between the parties had been adversarial, negating the existence of collusion. Assuming that the issues have not been joined before the RTC, the same is attributable to Estrellita's refusal to file an answer. Lastly, the CA disregarded Estrellita's allegation that the trial court erroneously rendered its judgment way prior to our remand to the RTC of the records of the case ratiocinating that G.R. No. 126603 pertains to the issue on the denial of the Motion to Dismiss, and not to the issue of the validity of Estrellita's marriage to Sen. Tamano.

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[33] *Id.* at 48-53.

[34] RULES OF COURT, Rule 9, Section 3(e) *Where no defaults allowed.* — If the defending party in an action for annulment or declaration of nullity of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated.

[35] FAMILY CODE, Article 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

The Parties' Respective Arguments

Reiterating her arguments before the court *a quo*, Estrellita now argues that the CA erred in upholding the RTC judgment as the latter was prematurely issued, depriving her of the opportunity to file an answer and to present her evidence to dispute the allegations against the validity of her marriage. She claims that *Judge Macias v. Macias*[36] laid down the rule that the filing of a motion to dismiss instead of an answer suspends the period to file an answer and, consequently, the trial court is obliged to suspend proceedings while her motion to dismiss on the ground of lack of jurisdiction has not yet been resolved with finality. She maintains that she merely participated in the RTC hearings because of the trial court's assurance that the proceedings will be without prejudice to whatever action the High Court will take on her petition questioning the RTC's jurisdiction and yet, the RTC violated this commitment as it rendered an adverse judgment on August 18, 1998, months before the records of G.R. No. 126603 were remanded to the CA on November 11, 1998.[37] She also questions the lack of a report of the public prosecutor anent a finding of whether there was collusion, this being a prerequisite before further proceeding could be held when a party has failed to file an answer in a suit for declaration of nullity of marriage.

Estrellita is also steadfast in her belief that her marriage with the late senator is valid as the latter was already divorced under the Muslim Code at the time he married her. She asserts that such law automatically applies to the marriage of Zorayda and the deceased without need of registering their consent to be covered by it, as both parties are Muslims whose marriage was solemnized under Muslim law. She pointed out that Sen. Tamano married all his wives under Muslim rites, as attested to by the affidavits of the siblings of the deceased.[38]

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[36] 457 Phil 463 (2003).

[37] *Rollo,* p. 217.

[38] *Id.* at 133, 135.

Lastly, Estrellita argues that Zorayda and Adib have no legal standing to file suit because only the husband or the wife can file a complaint for the declaration of nullity of marriage under Supreme Court Resolution A.M. No. 02-11-10-SC.[39]

Refuting the arguments, the Solicitor General (Sol Gen) defends the CA's reasoning and stresses that Estrellita was never deprived of her right to be heard; and, that filing an original action for *certiorari* does not stay the proceedings of the main action before the RTC.

As regards the alleged lack of report of the public prosecutor if there is collusion, the Sol Gen says that this is no longer essential considering the vigorous opposition of Estrellita in the suit that obviously shows the lack of collusion. The Sol Gen also supports private respondents' legal standing to challenge the validity of Estrellita's purported marriage with Sen. Tamano, reasoning that any proper interested party may attack directly or collaterally a void marriage, and Zorayda and Adib have such right to file the action as they are the ones prejudiced by the marital union.

Zorayda and Adib, on the other hand, did not file any comment.

Issues

The issues that must be resolved are the following:

1. Whether the CA erred in affirming the trial court's judgment, even though the latter was rendered prematurely because: a) the judgment was rendered without waiting for the Supreme Court's final resolution of her *certiorari* petition, *i.e.*, G.R. No. 126603; b) she has not yet filed her answer and thus was denied due process; and c) the public prosecutor did not even conduct an investigation whether there was collusion;

2. Whether the marriage between Estrellita and the late Sen. Tamano was bigamous; and

3. Whether Zorayda and Adib have the legal standing to have Estrellita's marriage declared void *ab initio*.

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[39] Inadvertently referred to as A.M. No. 00-11-01-SC.

Our Ruling

Estrellita's refusal to file an answer eventually led to the loss of her right to answer; and her pending petition for certiorari/review on certiorari questioning the denial of the motion to dismiss before the higher courts does not at all suspend the trial proceedings of the principal suit before the RTC of Quezon City.

Firstly, it can never be argued that Estrellita was deprived of her right to due process. She was never declared in default, and she even actively participated in the trial to defend her interest.

Estrellita invokes *Judge Macias v. Macias*[40] to justify the suspension of the period to file an answer and of the proceedings in the trial court until her petition for *certiorari* questioning the validity of the denial of her Motion to Dismiss has been decided by this Court. In said case, we affirmed the following reasoning of the CA which, apparently, is Estrellita's basis for her argument, *to wit*:

However, she opted to file, on April 10, 2001, a '*Motion to Dismiss*,' instead of filing an Answer to the complaint. The filing of said motion suspended the period for her to file her Answer to the complaint. Until said motion is resolved by the Respondent Court with finality, it behooved the Respondent Court to suspend the hearings of the case on the merits. The Respondent Court, on April 19, 2001, issued its Order denying the '*Motion to Dismiss*' of the Petitioner. Under Section 6, Rule 16 of the 1997 Rules of Civil Procedure [now Section 4], the Petitioner had the balance of the period provided for in Rule 11 of the said Rules but in no case less than five (5) days computed from service on her of the aforesaid Order of the Respondent Court within which to file her Answer to the complaint: x x x[41] (Emphasis supplied.)

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[40] *Supra* note 36.

[41] *Id.* at 468.

Estrellita obviously misappreciated *Macias*. All we pronounced therein is that the trial court is mandated to suspend trial until it finally resolves the motion to dismiss that is filed before it. Nothing in the above excerpt states that the trial court should suspend its proceedings should the issue of the propriety or impropriety of the motion to dismiss be raised before the appellate courts. In *Macias*, the trial court failed to observe due process in the course of the proceeding of the case because after it denied the wife's motion to dismiss, it immediately proceeded to allow the husband to present evidence *ex parte* and resolved the case with undue haste even when, under the rules of procedure, the wife still had time to file an answer. In the instant case, Estrellita had no time left for filing an answer, as she filed the motion to dismiss beyond the extended period earlier granted by the trial court after she filed motions for extension of time to file an answer.

Estrellita argues that the trial court prematurely issued its judgment, as it should have waited first for the resolution of her Motion to Dismiss before the CA and, subsequently, before this Court. However, in upholding the RTC, the CA correctly ruled that the pendency of a petition for *certiorari* does not suspend the proceedings before the trial court. "An application for *certiorari* is an independent action which is not part or a continuation of the trial which resulted in the rendition of the judgment complained of."[42] Rule 65 of the Rules of Court is explicit in stating that "[t]he petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case."[43] In fact, the trial court respected the CA's temporary restraining order and only after the CA rendered judgment did the RTC again require Estrellita to present her evidence.

Notably, when the CA judgment was elevated to us by way of Rule 45, we never issued any order precluding the trial court

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[42] *Sps. Diaz v. Diaz*, 387 Phil 314, 334 (2000).

[43] RULES OF COURT, Rule 65, Section 7.

from proceeding with the principal action. With her numerous requests for postponements, Estrellita remained obstinate in refusing to file an answer or to present her evidence when it was her turn to do so, insisting that the trial court should wait first for our decision in G.R. No. 126603. Her failure to file an answer and her refusal to present her evidence were attributable only to herself and she should not be allowed to benefit from her own dilatory tactics to the prejudice of the other party. *Sans* her answer, the trial court correctly proceeded with the trial and rendered its Decision after it deemed Estrellita to have waived her right to present her side of the story. Neither should the lower court wait for the decision in G.R. No. 126603 to become final and executory, nor should it wait for its records to be remanded back to it because G.R. No. 126603 involves strictly the propriety of the Motion to Dismiss and not the issue of validity of marriage.

The Public Prosecutor issued a report as to the non-existence of collusion.

Aside from Article 48 of the Family Code and Rule 9, Section 3(e) of the Rules of Court, the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC)[44] also requries the participation of the public prosecutor in cases involving void marriages. It specifically mandates the prosecutor to submit his investigation report to determine whether there is collusion between the parties:

> Sec. 9. ***Investigation report of public prosecutor.***–(1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.
>
> (2) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten days from receipt of a copy of the report. The court shall set the report

[44] Dated March 4, 2003, with an effectivity date of March 15, 2003.

for hearing and if convinced that the parties are in collusion, it shall dismiss the petition.

(3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

Records show that the trial court immediately directed the public prosecutor to submit the required report,[45] which we find to have been sufficiently complied with by Assistant City Prosecutor Edgardo T. Paragua in his Manifestation dated March 30, 1995,[46] wherein he attested that there could be no collusion between the parties and no fabrication of evidence because Estrellita is not the spouse of any of the private respondents.

Furthermore, the lack of collusion is evident in the case at bar. Even assuming that there is a lack of report of collusion or a lack of participation by the public prosecutor, just as we held in *Tuason v. Court of Appeals*,[47] the lack of participation of a fiscal does not invalidate the proceedings in the trial court:

> The role of the prosecuting attorney or fiscal in annulment of marriage and legal separation proceedings is to determine whether collusion exists between the parties and to take care that the evidence is not suppressed or fabricated. Petitioner's vehement opposition to the annulment proceedings negates the conclusion that collusion existed between the parties. There is no allegation by the petitioner that evidence was suppressed or fabricated by any of the parties. Under these circumstances, we are convinced that the non-intervention of a prosecuting attorney to assure lack of collusion between the contending parties is not fatal to the validity of the proceedings in the trial court.[48]

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[45] Records, p. 30.

[46] *Id.* at 56.

[47] 326 Phil 169 (1996).

[48] *Id.* at 181.

The Civil Code governs the marriage of Zorayda and the late Sen. Tamano; their marriage was never invalidated by PD 1083. Sen. Tamano's subsequent marriage to Estrellita is void ab initio.

The marriage between the late Sen. Tamano and Zorayda was celebrated in 1958, solemnized under civil and Muslim rites.[49] The only law in force governing marriage relationships between Muslims and non-Muslims alike was the Civil Code of 1950, under the provisions of which only one marriage can exist at any given time.[50] Under the marriage provisions of the Civil Code, divorce is not recognized except during the effectivity of Republic Act No. 394[51] which was not availed of during its effectivity.

As far as Estrellita is concerned, Sen. Tamano's prior marriage to Zorayda has been severed by way of divorce under PD 1083,[52] the law that codified Muslim personal laws. However, PD 1083 cannot benefit Estrellita. Firstly, Article 13(1) thereof provides that the law applies to "marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines." But we already ruled in G.R. No. 126603 that "Article 13 of PD 1083 does not provide for a situation where the parties were married both in civil and Muslim rites."[53]

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[49] *Supra* note 12, where Zorayda's disbarment complaint stated that the marriage was conducted under both rites.

[50] *Malang v. Judge Moson*, 398 Phil. 41 (2000).

[51] An Act Authorizing For A Period Of Twenty Years Divorce Among Moslems Residing In Non-Christian Provinces In Accordance With Moslem Customs and Practices (approved on June 18, 1949), Section 1 of which provides:

Section 1. For a period of twenty years from the date of the approval of this Act, divorce among Moslems residing in non-Christian provinces shall be recognized and be governed by Moslem customs and practices.

[52] Under Articles 45-57.

[53] *Tamano v. Hon. Ortiz, supra* note 19 at 781.

Moreover, the Muslim Code took effect only on February 4, 1977, and this law cannot retroactively override the Civil Code which already bestowed certain rights on the marriage of Sen. Tamano and Zorayda. The former explicitly provided for the prospective application of its provisions unless otherwise provided:

> Art. 186 (1). Effect of code on past acts. — Acts executed prior to the effectivity of this Code shall be governed by the laws in force at the time of their execution, and nothing herein except as otherwise specifically provided, shall affect their validity or legality or operate to extinguish any right acquired or liability incurred thereby.

It has been held that:

> The foregoing provisions are consistent with the principle that all laws operate prospectively, unless the contrary appears or is clearly, plainly and unequivocably expressed or necessarily implied; accordingly, every case of doubt will be resolved against the retroactive operation of laws. Article 186 aforecited enunciates the general rule of the Muslim Code to have its provisions applied prospectively, and implicitly upholds the force and effect of a pre-existing body of law, specifically, the Civil Code – in respect of civil acts that took place before the Muslim Code's enactment.[54]

An instance of retroactive application of the Muslim Code is Article 186(2) which states:

> A marriage contracted by a Muslim male prior to the effectivity of this Code in accordance with non-Muslim law shall be considered as one contracted under Muslim law provided the spouses register their mutual desire to this effect.

Even granting that there was registration of mutual consent for the marriage to be considered as one contracted under the Muslim law, the registration of mutual consent between Zorayda and Sen. Tamano will still be ineffective, as both are Muslims whose marriage was celebrated under both civil and Muslim laws. Besides, as we have already settled, the Civil Code governs their personal status since this was in effect at the time of the

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[54] *Malang v. Judge Moson, supra* note 50 at 57.

celebration of their marriage. In view of Sen. Tamano's prior marriage which subsisted at the time Estrellita married him, their subsequent marriage is correctly adjudged by the CA as void *ab initio*.

Zorayda and Adib, as the injured parties, have the legal personalities to file the declaration of nullity of marriage. A.M. No. 02-11-10-SC, which limits to only the husband or the wife the filing of a petition for nullity is prospective in application and does not shut out the prior spouse from filing suit if the ground is a bigamous subsequent marriage.

Her marriage covered by the Family Code of the Philippines,[55] Estrellita relies on A.M. No. 02-11-10-SC which took effect on March 15, 2003 claiming that under Section 2(a)[56] thereof, only the husband or the wife, to the exclusion of others, may file a petition for declaration of absolute nullity, therefore only she and Sen. Tamano may directly attack the validity of their own marriage.

Estrellita claims that only the husband or the wife **in a void marriage** can file a petition for declaration of nullity of marriage. However, this interpretation does not apply if the reason behind the petition is bigamy.

In explaining why under A.M. No. 02-11-10-SC only the spouses may file the petition to the exclusion of compulsory or intestate heirs, we said:

The Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, Legal Separation and Provisional Orders explicates on Section 2(a) in the following manner, *viz*:

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[55] EXECUTIVE ORDER NO. 209, which took effect on August 3, 1988.

[56] Sec. 2. ***Petition for declaration of absolute nullity of void marriages.***–

(a) ***Who may file.***–A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife.

> (1) Only an aggrieved or injured spouse may file petitions for annulment of voidable marriages and declaration of absolute nullity of void marriages. Such petitions cannot be filed by the compulsory or intestate heirs of the spouses or by the State. [Section 2; Section 3, paragraph a]
>
> Only an aggrieved or injured spouse may file a petition for annulment of voidable marriages or declaration of absolute nullity of void marriages. Such petition cannot be filed by compulsory or intestate heirs of the spouses or by the State. The Committee is of the belief that they do not have a legal right to file the petition. Compulsory or intestate heirs have only inchoate rights prior to the death of their predecessor, and hence can only question the validity of the marriage of the spouses upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts. On the other hand, the concern of the State is to preserve marriage and not to seek its dissolution.[57]

Note that the Rationale makes it clear that Section 2(a) of A.M. No. 02-11-10-SC refers to the "aggrieved or injured spouse." If Estrellita's interpretation is employed, the prior spouse is unjustly precluded from filing an action. Surely, this is not what the Rule contemplated.

The subsequent spouse may only be expected to take action if he or she had only discovered during the connubial period that the marriage was bigamous, and especially if the conjugal bliss had already vanished. Should parties in a subsequent marriage benefit from the bigamous marriage, it would not be expected that they would file an action to declare the marriage void and thus, in such circumstance, the "injured spouse" who should be given a legal remedy is the one in a subsisting previous marriage. The latter is clearly the aggrieved party as the bigamous marriage not only threatens the financial and the property ownership aspect of the prior marriage but most of all, it causes

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[57] *Enrico v. Heirs of Sps. Eulogio B. Medinaceli and Trinidad Catli-Medinaceli*, G.R. No. 173614, September 28, 2007, 534 SCRA 418, 429, citing Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, Legal Separation and Provisional Orders.

an emotional burden to the prior spouse. The subsequent marriage will always be a reminder of the infidelity of the spouse and the disregard of the prior marriage which sanctity is protected by the Constitution.

Indeed, Section 2(a) of A.M. No. 02-11-10-SC precludes the son from impugning the subsequent marriage. But in the case at bar, both Zorayda and Adib have legal personalities to file an action for nullity. Albeit the Supreme Court Resolution governs marriages celebrated under the Family Code, such is prospective in application and does not apply to cases already commenced before March 15, 2003.[58]

Zorayda and Adib filed the case for declaration of nullity of Estrellita's marriage in November 1994. While the Family Code is silent with respect to the proper party who can file a petition for declaration of nullity of marriage prior to A.M. No. 02-11-10-SC, it has been held that in a void marriage, in which no marriage has taken place and cannot be the source of rights, any interested party may attack the marriage directly or collaterally without prescription, which may be filed even beyond the lifetime of the parties to the marriage.[59] Since A.M. No. 02-11-10-SC does not apply, Adib, as one of the children of the deceased who has property rights as an heir, is likewise considered to be the real party in interest in the suit he and his mother had filed since both of them stand to be benefited or injured by the judgment in the suit.[60]

Since our Philippine laws protect the marital union of a couple, they should be interpreted in a way that would preserve their respective rights which include striking down bigamous marriages. We thus find the CA Decision correctly rendered.

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[58] *Carlos v. Sandoval*, G.R. No. 179922, December 16, 2008, 574 SCRA 116, 132 citing *Enrico v. Heirs of Sps. Eulogio B. Medinaceli and Trinidad Catli-Medinaceli, supra* note 57 at 428.

[59] *Niñal v. Bayadog*, 384 Phil. 661, 673 (2000).

[60] RULES OF COURT, Rule 3, Section 2.

WHEREFORE, the petition is *DENIED*. The assailed August 17, 2004 Decision of the Court of Appeals in CA-G.R. CV No. 61762, as well as its subsequent Resolution issued on September 13, 2005, are hereby *AFFIRMED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 170351. March 30, 2011]

LEYTE GEOTHERMAL POWER PROGRESSIVE EMPLOYEES UNION-ALU-TUCP, *petitioner, vs.* **PHILIPPINE NATIONAL OIL COMPANY-ENERGY DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; KINDS OF EMPLOYEES; NATURE OF EMPLOYMENT IS DETERMINED BY LAW; CASE AT BAR.— The distinction between a regular and a project employment is provided in Article 280, paragraph 1, of the Labor Code: x x x The law contemplates four (4) kinds of employees: (a) *regular* employees or those who have been "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer"; (b) *project* employees or those "whose employment has been fixed for a specific project or undertaking[,] the completion or termination of which has been determined at the time of the engagement of the employee"; (c) *seasonal* employees or those who work or perform services

which are seasonal in nature, and the employment is for the duration of the season; and (d) *casual* employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind — a fixed-term employee. Article 280 of the Labor Code, as worded, establishes that the nature of the employment is determined by law, regardless of any contract expressing otherwise. The supremacy of the law over the nomenclature of the contract and the stipulations contained therein is to bring to life the policy enshrined in the Constitution to "afford full protection to labor." Thus, labor contracts are placed on a higher plane than ordinary contracts; these are imbued with public interest and therefore subject to the police power of the State. However, notwithstanding the foregoing iterations, project employment contracts which fix the employment for a specific project or undertaking remain valid under the law: x x x By entering into such a contract, an employee is deemed to understand that his employment is coterminous with the project. He may not expect to be employed continuously beyond the completion of the project.

2. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI JUDICIAL BODIES; GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY; APPLICATION IN CASE AT BAR.— It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. Rule 133, Section 5 defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases. We may take cognizance of and resolve factual issues, only when the findings of fact and conclusions of law of the Labor Arbiter or the NLRC are inconsistent with those of the CA.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROJECT EMPLOYEES; TWO CATEGORIES THEREOF, DISTINGUISHED; APPLICATION IN CASE AT BAR.— The landmark case of *ALU-TUCP v. NLRC* instructs on the

two (2) categories of project employees: x x x It is evidently important to become clear about the meaning and scope of the term "project" in the present context. The "project" for the carrying out of which "project employees" are hired would ordinarily have some relationship to the usual business of the employer. Exceptionally, the "project" undertaking might not have an ordinary or normal relationship to the usual business of the employer. In this latter case, the determination of the scope and parameters of the "project" becomes fairly easy. x x x . From the viewpoint, however, of the legal characterization problem here presented to the Court, there should be no difficulty in designating the employees who are retained or hired for the purpose of undertaking fish culture or the production of vegetables as "project employees," as distinguished from ordinary or "regular employees," so long as the duration and scope of the project were determined or specified at the time of engagement of the "project employees." **For, as is evident from the provisions of Article 280 of the Labor Code, quoted earlier, the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.** x x x Plainly, the litmus test to determine whether an individual is a project employee lies in setting a fixed period of employment involving a specific undertaking which completion or termination has been determined at the time of the particular employee's engagement. In this case, as previously adverted to, the officers and the members of petitioner Union were specifically hired as project employees for respondent's Leyte Geothermal Power Project located at the Greater Tongonan Geothermal Reservation in Leyte. Consequently, upon the completion of the project or substantial phase thereof, the officers and the members of petitioner Union could be validly terminated.

4. ID.; LABOR RELATIONS; STRIKES AND LOCKOUTS; REQUISITES SET BY LAW PRIOR TO HOLDING A STRIKE, NOT COMPLIED WITH IN CASE AT BAR.— Article 263 of the Labor Code enumerates the requisites for holding a strike x x x. Petitioner Union's bare contention that

it did not hold a strike cannot trump the factual findings of the NLRC that petitioner Union indeed struck against respondent. In fact, and more importantly, petitioner Union failed to comply with the requirements set by law prior to holding a strike.

APPEARANCES OF COUNSEL

Jose Vicente M. Arnado for petitioner.
Medado Sinsuat & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

Under review is the Decision[1] dated June 30, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 65760, which dismissed the petition for *certiorari* filed by petitioner Leyte Geothermal Power Progressive Employees Union — ALU — TUCP (petitioner Union) to annul and set aside the decision[2] dated December 10, 1999 of the National Labor Relations Commission (NLRC) in NLRC Certified Case No. V-02-99.

The facts, fairly summarized by the CA, follow.

[Respondent Philippine National Oil Corporation]-Energy Development Corporation [PNOC-EDC] is a government-owned and controlled corporation engaged in exploration, development, utilization, generation and distribution of energy resources like geothermal energy.

Petitioner is a legitimate labor organization, duly registered with the Department of Labor and Employment (DOLE) Regional Office No. VIII, Tacloban City.

Among [respondent's] geothermal projects is the Leyte Geothermal Power Project located at the Greater Tongonan

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[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas, concurring; *rollo*, pp. 37-47.

[2] Penned by Commissioner Amorito V. Cañete with Presiding Commissioner Irenea E. Ceniza and Commissioner Bernabe S. Batuhan, concurring; *id.* at 105-124.

Geothermal Reservation in Leyte. The said Project is composed of the Tongonan 1 Geothermal Project (T1GP) and the Leyte Geothermal Production Field Project (LGPF) which provide the power and electricity needed not only in the provinces and cities of Central and Eastern Visayas (Region VII and VIII), but also in the island of Luzon as well. Thus, the [respondent] hired and employed hundreds of employees on a contractual basis, whereby, their employment was only good up to the completion or termination of the project and would automatically expire upon the completion of such project.

Majority of the employees hired by [respondent] in its Leyte Geothermal Power Projects had become members of petitioner. In view of that circumstance, the petitioner demands from the [respondent] for recognition of it as the collective bargaining agent of said employees and for a CBA negotiation with it. However, the [respondent] did not heed such demands of the petitioner. Sometime in 1998 when the project was about to be completed, the [respondent] proceeded to serve Notices of Termination of Employment upon the employees who are members of the petitioner.

On December 28, 1998, the petitioner filed a Notice of Strike with DOLE against the [respondent] on the ground of purported commission by the latter of unfair labor practice for "refusal to bargain collectively, union busting and mass termination." On the same day, the petitioner declared a strike and staged such strike.

To avert any work stoppage, then Secretary of Labor Bienvenido E. Laguesma intervened and issued the Order, dated January 4, 1999, certifying the labor dispute to the NLRC for compulsory arbitration. Accordingly, all the striking workers were directed to return to work within twelve (12) hours from receipt of the Order and for the [respondent] to accept them back under the same terms and conditions of employment prior to the strike. Further, the parties were directed to cease and desist from committing any act that would exacerbate the situation.

However, despite earnest efforts on the part of the Secretary of Labor and Employment to settle the dispute amicably, the petitioner remained adamant and unreasonable in its position, causing the failure of the negotiation towards a peaceful compromise. In effect, the petitioner did not abide by [the] assumption order issued by the Secretary of Labor.

Consequently, on January 15, 1999, the [respondent] filed a Complaint for Strike Illegality, Declaration of Loss of Employment and Damages at the NLRC-RAB VIII in Tacloban City and at the same time, filed a Petition for Cancellation of Petitioner's Certificate of Registration with DOLE, Regional Office No. VIII. The two cases were later on consolidated pursuant to the New NLRC Rules of Procedure. The consolidated case was docketed as NLRC Certified Case No. V-02-99 (NCMB-RAB VIII-NS-12-0190-98; RAB Case No. VIII-1-0019-99). The said certified case was indorsed to the NLRC 4th Division in Cebu City on June 21, 1999 for the proper disposition thereof.[3]

In due course, the NLRC 4th Division rendered a decision in favor of respondent, to wit:

WHEREFORE, based on the foregoing premises, judgment is hereby rendered as follows:

1. Declaring the officers and members of [petitioner] Union as project employees;

2. Declaring the termination of their employment by reason of the completion of the project, or a phase or portion thereof, to which they were assigned, as valid and legal;

3. Declaring the strike staged and conducted by [petitioner] Union through its officers and members on December 28, 1998 to January 6, 1999 as illegal for failure to comply with the mandatory requirements of the law on strike[;]

4. Declaring all the officers and members of the board of [petitioner] Union who instigated and spearheaded the illegal strike to have lost their employment[;]

5. Dismissing the claim of [petitioner] Union against PNOC-EDC for unfair labor practice for lack of merit[;]

6. Dismissing both parties' claims against each other for violation of the Assumption Order dated January 4, 1999 for lack of factual basis[;]

7. Dismissing all other claims for lack of merit.[4]

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[3] *Supra*, note 1, at 38-40.

[4] *Supra* note 2, at 123-124.

Petitioner Union filed a motion for reconsideration of the NLRC decision, which was subsequently denied. Posthaste, petitioner Union filed a petition for *certiorari* before the CA, alleging grave abuse of discretion in the decision of the NLRC. As previously adverted to, the CA dismissed the petition for *certiorari*, thus:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DISMISSING** the Petition. The assailed Decision dated December 10, 1999 of the NLRC 4th Division in NLRC Certified Case No. V-02-99 (NCMB-RAB VIII-NS-12-0190-98; RAB Case No. VIII-1-0019-99) and its Order dated March 30, 2001 are hereby **AFFIRMED**.
>
> Costs against the Petitioner.[5]

Hence, this appeal by *certiorari* filed by petitioner Union, positing the following questions of law:

> 1. MAY THE HONORABLE COURT OF APPEALS SUSTAIN THE "PROJECT CONTRACTS" THAT ARE DESIGNED TO DENY AND DEPRIVE THE EMPLOYEES' THEIR RIGHT TO SECURITY OF TENURE BY MAKING IT APPEAR THAT THEY ARE *MERE* PROJECT EMPLOYEES?
>
> 2. WHEN THERE ARE *NO* INTERVALS IN THE EMPLOYEES' CONTRACT, SUCH THAT THE SO-CALLED UNDERTAKING WAS *CONTINUOUS*, ARE THE EMPLOYEES PROPERLY TREATED AS *PROJECT* EMPLOYEES?
>
> 3. MAY THE HONORABLE COURT OF APPEALS *IGNORE* THE FIRM'S OWN ESTIMATE OF JOB COMPLETION, PROVING THAT THERE IS STILL 56.25% CIVIL/STRUCTURAL WORK TO BE ACCOMPLISHED, AND RULE THAT THE EMPLOYEES WERE DISMISSED FOR COMPLETION [OF] THE "PROJECT?"
>
> 4. MAY A FIRM HIDE UNDER THE *SPURIOUS* CLOAK OF "PROJECT COMPLETION" TO DISMISS *EN MASSE* THE EMPLOYEES WHO HAVE ORGANIZED AMONG THEMSELVES A LEGITIMATE LABOR ORGANIZATION TO PROTECT THEIR RIGHTS?

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[5] *Supra*, note 1, at 46.

5. WHEN THERE IS *NO* STOPPAGE OF WORK, MAY A PROTEST ACTIVITY BE CONSIDERED AS A *STRIKE* CONTRARY TO ITS CONCEPTUAL DEFINITION UNDER **ARTICLE 212 (O) OF THE LABOR CODE OF THE PHILIPPINES**?

6. WHEN THE DISMISSAL IS AIMED AT RIDDING THE COMPANY OF MEMBERS OF THE UNION, IS THIS UNION BUSTING?[6]

Stripped of rhetoric, the issues for our resolution are:

1. Whether the officers and members of petitioner Union are project employees of respondent; and

2. Whether the officers and members of petitioner Union engaged in an illegal strike.

On the first issue, petitioner Union contends that its officers and members performed activities that were usually necessary and desirable to respondent's usual business. In fact, petitioner Union reiterates that its officers and members were assigned to the *Construction Department* of respondent as carpenters and masons, and to other jobs pursuant to civil works, which are usually necessary and desirable to the department. Petitioner Union likewise points out that there was no interval in the employment contract of its officers and members, who were all employees of respondent, which lack of interval, for petitioner Union, "manifests that the 'undertaking' is usually necessary and desirable to the usual trade or business of the employer."

We cannot subscribe to the view taken by petitioner Union.

The distinction between a regular and a project employment is provided in Article 280, paragraph 1, of the Labor Code:

ART. 280. *Regular and Casual Employment*.— The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the**

[6] Petition of Petitioner; *rollo*, pp. 25-26.

completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists.[7]

The foregoing contemplates four (4) kinds of employees: (a) *regular* employees or those who have been "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer"; (b) *project* employees or those "whose employment has been fixed for a specific project or undertaking[,] the completion or termination of which has been determined at the time of the engagement of the employee"; (c) *seasonal* employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season;[8] and (d) *casual* employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind— a fixed-term employee.[9]

Article 280 of the Labor Code, as worded, establishes that the nature of the employment is determined by law, regardless of any contract expressing otherwise. The supremacy of the law over the nomenclature of the contract and the stipulations contained therein is to bring to life the policy enshrined in the Constitution to "afford full protection to labor."[10] Thus, labor

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[7] Emphasis supplied.

[8] See *Phil. Tobacco Flue-Curing & Redrying Corp. v. NLRC*, 360 Phil. 218 (1998).

[9] *Asia World Recruitment Inc. v. NLRC,* 371 Phil. 745, 755-756 (1999); *Palomares v. NLRC, (5th Division),* G.R. No. 120064, August 15, 1997, 277 SCRA 439, 447-449; *Brent School, Inc. v. Zamora*, 260 Phil. 747, 758-762 (1990).

[10] Article XIII, Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

contracts are placed on a higher plane than ordinary contracts; these are imbued with public interest and therefore subject to the police power of the State.[11]

However, notwithstanding the foregoing iterations, project employment contracts which fix the employment for a specific project or undertaking remain valid under the law:

x x x By entering into such a contract, an employee is deemed to understand that his employment is coterminous with the project. He may not expect to be employed continuously beyond the completion of the project. It is of judicial notice that project employees engaged for manual services or those for special skills like those of carpenters or masons, are, as a rule, unschooled. However, this fact alone is not a valid reason for bestowing special treatment on them or for invalidating a contract of employment. Project employment contracts are not lopsided agreements in favor of only one party thereto. The employer's interest is equally important as that of the employee[s'] for theirs is the interest that propels economic activity. While it may be true that it is the employer who drafts project employment contracts with its business interest as overriding consideration, such contracts do not, of necessity, prejudice the employee. Neither is the employee left helpless by a prejudicial employment contract. After all, under the law, the interest of the worker is paramount.[12]

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[11] See Articles 1700 and 1702 of the Civil Code; *Villa v. NLRC*, 348 Phil. 116, 140-141 (1998).

[12] *Villa v. NLRC, supra,* at 141.

In the case at bar, the records reveal that the officers and the members of petitioner Union signed employment contracts indicating the specific project or phase of work for which they were hired, with a fixed period of employment. The NLRC correctly disposed of this issue:

> A deeper examination also shows that [the individual members of petitioner Union] indeed signed and accepted the [employment contracts] freely and voluntarily. No evidence was presented by [petitioner] Union to prove improper pressure or undue influence when they entered, perfected and consummated [the employment] contracts. In fact, it was clearly established in the course of the trial of this case, as explained by no less than the President of [petitioner] Union, that the contracts of employment were read, comprehended, and voluntarily accepted by them. x x x.
>
> x x x x x x x x x
>
> As clearly shown by [petitioner] Union's own admission, both parties had executed the contracts freely and voluntarily without force, duress or acts tending to vitiate the worker[s'] consent. Thus, we see no reason not to honor and give effect to the terms and conditions stipulated therein. x x x.[13]

Thus, we are hard pressed to find cause to disturb the findings of the NLRC which are supported by substantial evidence.

It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[14] Rule 133, Section 5 defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

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[13] *Supra* note 2, at 110.

[14] *G & M (Phils.), Inc. v. Cruz*, 496 Phil. 119, 123-124 (2005).

Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.[15] We may take cognizance of and resolve factual issues, only when the findings of fact and conclusions of law of the Labor Arbiter or the NLRC are inconsistent with those of the CA.[16]

In the case at bar, both the NLRC and the CA were one in the conclusion that the officers and the members of petitioner Union were project employees. Nonetheless, petitioner Union insists that they were regular employees since they performed work which was usually necessary or desirable to the usual business or trade of the *Construction Department* of respondent.

The landmark case of *ALU-TUCP v. NLRC*[17] instructs on the two (2) categories of project employees:

> It is evidently important to become clear about the meaning and scope of the term "project" in the present context. The "project" for the carrying out of which "project employees" are hired would ordinarily have some relationship to the usual business of the employer. Exceptionally, the "project" undertaking might not have an ordinary or normal relationship to the usual business of the employer. In this latter case, the determination of the scope and parameters of the "project" becomes fairly easy. x x x. From the viewpoint, however, of the legal characterization problem here presented to the Court, there should be no difficulty in designating the employees who are retained or hired for the purpose of undertaking fish culture or the production of vegetables as "project employees," as distinguished from ordinary or "regular employees," so long as the duration and scope of the project were determined or specified at the time of engagement of the "project employees." **For, as is evident from the provisions of Article 280 of the Labor Code, quoted earlier, the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry**

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[15] *PCL Shipping Philippines, Inc. v. NLRC*, G.R. No. 153031, December 14, 2006, 511 SCRA 44, 54.

[16] *Id*.

[17] G.R. No. 109902, August 2, 1994, 234 SCRA 678, 684-686.

out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.

In the realm of business and industry, we note that "project" could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to a particular job or undertaking that is *within the regular or usual business of the employer company*, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. A construction company ordinarily carries out two or more [distinct] identifiable construction projects: *e.g.*, a twenty-five-storey hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as "project employees," and their services may be lawfully terminated at completion of the project.

The term "project" could also refer to, secondly, a particular job or undertaking that is *not* within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times.[18]

Plainly, the litmus test to determine whether an individual is a project employee lies in setting a fixed period of employment involving a specific undertaking which completion or termination has been determined at the time of the particular employee's engagement.

In this case, as previously adverted to, the officers and the members of petitioner Union were specifically hired as project employees for respondent's Leyte Geothermal Power Project located at the Greater Tongonan Geothermal Reservation in Leyte. Consequently, upon the completion of the project or

[18] Emphasis supplied.

substantial phase thereof, the officers and the members of petitioner Union could be validly terminated.

Petitioner Union is adamant, however, that the lack of interval in the employment contracts of its officer and members negates the latter's status as mere project employees. For petitioner Union, the lack of interval further drives home its point that its officers and members are regular employees who performed work which was usually necessary or desirable to the usual business or trade of respondent.

We are not persuaded.

Petitioner Union's members' employment for more than a year does equate to their regular employment with respondent. In this regard, *Mercado, Sr. v. NLRC*[19] illuminates:

> The first paragraph [of Article 280 of the Labor Code] answers the question of who are regular employees. It states that, regardless of any written or oral agreement to the contrary, an employee is deemed regular where he is engaged in necessary or desirable activities in the usual business or trade of the employer, *except for project employees.*
>
> A project employee has been defined to be one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee, or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season, as in the present case.
>
> The second paragraph of Art. 280 demarcates as "casual" employees, all other employees who do not fall under the definition of the preceding paragraph. The proviso, in said second paragraph, deems as regular employees those "casual" employees who have rendered at least one year of service regardless of the fact that such service may be continuous or broken.
>
> Petitioners, in effect, contend that the proviso in the second paragraph of Art. 280 is applicable to their case and that the Labor Arbiter should have considered them regular by virtue of said proviso. The contention is without merit.

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[19] G.R No. 79869, September 5, 1991, 201 SCRA 332, 341-343.

The general rule is that the office of a proviso is to qualify or modify only the phrase immediately preceding it or restrain or limit the generality of the clause that it immediately follows. Thus, it has been held that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, and not to the statute itself or to other sections thereof. The only exception to this rule is where the clear legislative intent is to restrain or qualify not only the phrase immediately preceding it (the proviso) but also earlier provisions of the statute or even the statute itself as a whole.

Policy Instruction No. 12 of the Department of Labor and Employment discloses that the concept of regular and casual employees was designed to put an end to casual employment in regular jobs, which has been abused by many employers to prevent so – called casuals from enjoying the benefits of regular employees or to prevent casuals from joining unions. The same instructions show that the proviso in the second paragraph of Art. 280 was not designed to stifle small-scale businesses nor to oppress agricultural land owners to further the interests of laborers, whether agricultural or industrial. What it seeks to eliminate are abuses of employers against their employees and not, as petitioners would have us believe, to prevent small-scale businesses from engaging in legitimate methods to realize profit. Hence, the proviso is applicable only to the employees who are deemed "casuals" but not to the "project" employees nor the regular employees treated in paragraph one of Art. 280.

Clearly, therefore, petitioners being project employees, or, to use the correct term, *seasonal employees*, their employment legally ends upon completion of the project or the [end of the] season. The termination of their employment cannot and should not constitute an illegal dismissal.

Considering our holding that the officers and the members of petitioner Union were project employees, its claim of union busting is likewise dismissed.

On the second issue, petitioner Union contends that there was no stoppage of work; hence, they did not strike. Euphemistically, petitioner Union avers that it "only engaged in picketing,"[20] and maintains that "without any work stoppage, [its officers and members] only engaged in xxx protest activity."

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[20] Petitioner's Memorandum, *rollo*, p. 398.

We are not convinced. Petitioner Union splits hairs.

To begin with, quite evident from the records is the undisputed fact that petitioner Union filed a Notice of Strike on December 28, 1998 with the Department of Labor and Employment, grounded on respondent's purported unfair labor practices, *i.e.*, "refusal to bargain collectively, union busting and mass termination." On even date, petitioner Union declared and staged a strike.

Second, then Secretary of Labor, Bienvenido E. Laguesma, intervened and issued a Return-to-Work Order[21] dated January 4, 1999, certifying the labor dispute to the NLRC for compulsory arbitration. The Order narrates the facts leading to the labor dispute, to wit:

> On 28 December 1998, [petitioner Union] filed a Notice of Strike against [respondent] citing unfair labor practices, specifically: refusal to bargain collectively, union busting and mass termination as the grounds [therefor]. On the same day, [petitioner] Union went on strike and took control over [respondent's] facilities of its Leyte Geothermal Project.
>
> Attempts by the National Conciliation and Mediation Board – RBVIII to forge a mutually acceptable solution proved futile.
>
> In the meantime, the strike continues with no settlement in sight placing in jeopardy the supply of much needed power supply in the Luzon and Visayas grids.
>
> x x x x x x x x x
>
> The on-going strike threatens the availability of continuous electricity to these areas which is critical to day-to-day life, industry, commerce and trade. Without doubt, [respondent's] operations [are] indispensable to the national interest and falls (*sic*) within the purview of Article 263 (g) of the Labor Code, as amended, which warrants (*sic*) the intervention of this Office.

Third, petitioner Union itself, in its pleadings, used the word "strike."

Ultimately, petitioner Union's asseverations are belied by the factual findings of the NLRC, as affirmed by the CA:

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[21] *Id.* at 194-195.

The failure to comply with the mandatory requisites for the conduct of strike is both admitted and clearly shown on record. Hence, it is undisputed that no strike vote was conducted; likewise, the cooling-off period was not observed and that the 7-day strike ban after the submission of the strike vote was not complied with since there was no strike vote taken.

x x x x x x x x x

The factual issue of whether a notice of strike was timely filed by [petitioner] Union was resolved by the evidence on record. The evidence revealed that [petitioner] Union struck even before it could file the required notice of strike. Once again, this relied on [petitioner] Union's proof. [Petitioner] Union['s] witness said:

Atty. Sinsuat	: You stated that you struck on 28 December 1998 is that correct?
Witness	: Early in the morning of December 1998.
x x x	x x x x x x
Atty. Sinsuat	: And you went there to conduct the strike did you not?
Witness	: Our plan then was to strike at noon of December 28 and the strikers will be positioned at their respective areas.[22]

Article 263 of the Labor Code enumerates the requisites for holding a strike:

Art. 263. *Strikes, picketing, and lockouts*. – (a) x x x.

x x x x x x x x x.

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws,

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

which may constitute union busting, where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the Department of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Department to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Department the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

In fine, petitioner Union's bare contention that it did not hold a strike cannot trump the factual findings of the NLRC that petitioner Union indeed struck against respondent. In fact, and more importantly, petitioner Union failed to comply with the requirements set by law prior to holding a strike.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 65760 is *AFFIRMED*. Costs against petitioner Union.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171427. March 30, 2011]

STERLING SELECTIONS CORPORATION, *petitioner, vs.* **LAGUNA LAKE DEVELOPMENT AUTHORITY (LLDA) and JOAQUIN G. MENDOZA, in his capacity as General Manager of LLDA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATUTES; INTERPRETATION OF; *EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS*; THE LEGAL MAXIM SHOULD BE APPLIED ONLY AS A MEANS OF DISCOVERING LEGISLATIVE INTENT; NOT PROPER IN CASE AT BAR.— The word *include* means "to take in or comprise **as a part of a whole**." Thus, this Court has previously held that it necessarily conveys the very idea of non-exclusivity of the enumeration. The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only. The maxim *expressio unius est exclusio alterius* does not apply when words are mentioned by way of example. Said legal maxim should be applied only as a means of discovering legislative intent which is not otherwise manifest. In another case, the Court said: [T]he word "involving," when understood in the sense of "including," as in including *technical or financial assistance*, necessarily implies that there are activities other than *those that are being included*. In other words, if an agreement *includes* technical or financial assistance, there is [–] apart from such assistance – something else already in[,] and covered or may be covered by, the said agreement. As the regulation stands, therefore, all *cottage industries including*, but not limited to, those enumerated therein are exempted from securing prior clearance from the LLDA. Hence, the CA erred in ruling that only the three activities enumerated therein are exempted.

2. ID.; R.A. NO. 6977 (THE MAGNA CARTA OF SMALL ENTERPRISES); JEWELRY MAKING AS A COTTAGE INDUSTRY; THE NATURE OF ACTIVITY IS ONLY ONE

OF SEVERAL FACTORS TO BE CONSIDERED IN DETERMINING WHETHER THE SAME IS A COTTAGE INDUSTRY; CLARIFIED.— That jewelry-making is one of the activities considered as a *cottage industry* is undeniable. The laws bear this out. However, based on these same laws, the nature of the activity is **only one of several factors** to be considered in determining whether the same is a *cottage industry*. In view of the emphasis in law after law on the capitalization or asset requirements, it is crystal clear that the same is a defining element in determining if an enterprise is a *cottage industry*. x x x Under R.A. No. 6977, the term *total assets* was understood to mean "inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant, and equipment are situated." *Assets* consist of property of all kinds, real and personal, tangible and intangible, including, *inter alia*, for certain purposes, patents and causes of action which belong to any person, including a corporation and the estate of a decedent. It is the entire property of a person, association, corporation, or estate that is applicable or subject to the payment of his, her, or its debts. x x x The law speaks of **total assets**. Petitioner's own evidence, *i.e.*, balance sheets prepared by CPAs it commissioned itself, shows that it has assets other than its paid-up capital. According to the Consolidated Balance Sheet presented by petitioner, it had assets amounting to ₱4,628,900.80 by the end of 1998, and ₱1,746,328.17 by the end of 1997. Obviously, these amounts are over the maximum prescribed by law for cottage industries. Thus, the conclusion is that petitioner is not a *cottage industry* and, hence, is not exempted from the requirement to secure an LLDA clearance.

3. ID.; R.A. NO. 7844 (EXPORT DEVELOPMENT ACT OF 1994); EXPORTER, DEFINED; BEING AN ACCREDITED EXPORTER RECOGNIZED BY THE BUREAU OF EXPORT TRADE PROMOTION (BETP) IS A DEVIATION FROM THE CONNOTATION OF SMALL SCALE; APPLICATION IN CASE AT BAR.— Further militating against petitioner's claim is the RTC's astute observation that being an accredited exporter recognized by the Bureau of Export Trade Promotion (BETP) of the DTI seemed like a deviation from the connotation of "small scale." The Court notes that, to be accredited by the BETP as an exporter, there are strict standards that the enterprise must meet. Under R.A. No. 7844,

the *Export Development Act of 1994*, an exporter is any person, natural or juridical, licensed to do business in the Philippines, engaged directly or indirectly in the production, manufacture or trade of products or services, which earns at least fifty percent (50%) of its normal operating revenues from the sale of its products or services abroad for foreign currency. The same law provides for tax incentives to exporters, with the qualification that the incentives shall be granted only upon presentation of their BETP certification of the exporter's eligibility. Qualified exporters applying for BETP certification must present a report of their export revenue/sales for the immediately preceding year. DTI Administrative Order No. 3, Series of 1995, provides for the mechanisms of accreditation for exporters *vis-à-vis* the tax incentives granted under R.A. No. 7844. Under *Procedure for Accreditation of Exporters*, the following schedule of application fees was set forth:

Export Value Per Year	Application Fee
$1M – 5M Max.	₱1,000.00
Above $1M – 5M Max.	2,000.00
Above $5M – 10M Max.	3,000.00
Above $10M – 15M Max.	4,000.00
Above $15M	5,000.00

Consequently, an exporter must be able to generate and export enough products, with an export value of $1 million per year, in order to be accredited by the BETP for tax incentives. Petitioner's accreditation shows that it complied with this requirement. Based on the foregoing, it is clear that petitioner cannot be considered a *cottage industry*. Therefore, it is not exempted from complying with the clearance requirement of the LLDA.

4. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES ON TECHNICAL MATTERS; ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY; CASE AT BAR.— It is a doctrine of long-standing that factual findings of administrative bodies on technical matters within their area of expertise should be accorded not only respect but even finality if they are supported by substantial evidence even if they are not overwhelming or preponderant. Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with regulation

of activities coming under the special and technical training and knowledge of such agency. The exercise of administrative discretion is a policy decision and a matter that is best discharged by the government agency concerned and not by the courts.

APPEARANCES OF COUNSEL

Joseph Cohon for petitioner.
Eduardo L. Torres & Marilou R. Remullar for respondents.
Mario C.V. Jalandoni for respondents-intervenors.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioner Sterling Selections Corporation (petitioner) is assailing the Decision[1] dated May 30, 2005 and the Resolution[2] dated January 31, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 79889.

Petitioner is a company engaged in the fabrication of sterling silver jewelry. Its products are manufactured in the home of its principal stockholders, Asuncion Maria and Juan Luis Faustmann (Faustmanns), located in Barangay (Brgy.) Mariana, New Manila, Quezon City.[3]

Sometime in 1992, one of petitioner's neighbors in Brgy. Mariana filed a complaint with the Office of the Chairman of Brgy. Mariana against petitioner for "creating loud unceasing noise and emitting toxic fumes," coming from the manufacturing plant of the latter's predecessor, Unson, Faustmann and Company, Inc.[4] During conciliation proceedings, petitioner's management undertook to relocate its operations within a month. The parties

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Vicente S.E. Veloso, concurring; *rollo*, pp. 40-51.

[2] *Id.* at 55-56.

[3] *Id.* at 12.

[4] *Id.* at 357.

signed an Agreement to that effect.[5] However, petitioner failed to abide by the undertaking and continued to manufacture its products in its Brgy. Mariana workshop.

On January 16, 1998, Alicia P. Maceda (Maceda), another neighbor of petitioner, wrote a letter to the Brgy. Chairman to complain about the loud noise and offensive toxic fumes coming from petitioner's manufacturing plant.[6] She also filed a formal complaint with the Department of Environment and Natural Resources (DENR)-National Capital Region office. The complaint was endorsed by the DENR to one of the agencies under it, respondent Laguna Lake Development Authority (LLDA), which had territorial and functional jurisdiction over the matter.[7]

Subsequently, the Monitoring and Enforcement Section-Pollution Control Division of LLDA conducted an inspection of petitioner's premises. According to the LLDA, it was observed that the wastewater generated by petitioner's operations was drained directly to the sewer canal. However, since the wastewater was not yet for disposal, no sample could be collected during the inspection.

On November 19, 1998, a Notice of Violation and a Cease and Desist Order (CDO) were served on petitioner after it was found that it was operating without an LLDA Clearance and Permit, as required by Republic Act (R.A.) No. 4850.[8]

Meanwhile, Maceda's complaint was endorsed by the LLDA to the Office of the Mayor of Quezon City. After hearing and investigation, the Office of the Mayor issued a Closure Order against petitioner after finding that it was operating without the requisite business permit, since it was running a jewelry manufacturing plant with an "Office Only" permit, and for violation of Zoning and Environmental Laws.[9]

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[5] *Id.*

[6] *Id.* at 41-42.

[7] *Id.* at 42.

[8] *Id.* at 393.

[9] *Id.* at 42.

Petitioner then filed a petition for *mandamus* before the Regional Trial Court (RTC), Branch 167, Pasig City. Contending that, as a *cottage industry*, its jewelry business is exempt from the requirement to secure a permit from the LLDA, petitioner asked the court to order the latter to issue a certificate of exemption in its favor. The RTC denied the petition, ruling that *mandamus* does not lie to compel the performance of a discretionary duty. Nonetheless, the RTC allowed petitioner to file an amended petition for *certiorari* and *mandamus*.[10]

In its amended petition, petitioner averred that its business was classified as a *cottage industry*. It argued that under R.A. No. 6977, the law prevailing at the time of its registration with the Securities and Exchange Commission (SEC) in December 1996, *cottage industry* was defined as one with assets worth ₱50,001.00 to ₱500,000.00.[11] Since, based on its Articles of Incorporation and Certified Public Accountant (CPA)'s Balance Sheet, its total assets when it was incorporated amounted only to ₱312,500.00, it qualified as a *cottage industry*.

Intervenors Maceda, Ma. Corazon G. Logarta (Logarta), and Rosario "Charito" Planas (Planas) filed a motion for intervention. Their Answer-in-Intervention was subsequently admitted by the RTC.

On April 1, 2002, the RTC promulgated a decision[12] denying the petition. In rejecting petitioner's claim that it was a *cottage industry*, the RTC said:

> While it is true that plaintiff [petitioner]'s economic activity is carried on in a home, which incidentally gained the ire of the neighbors that culminated in a complaint against the plaintiff, it was manned not with the members of the family but by at least two hundred employees who were strangers and not known to the community. Moreso, being an accredited exporter recognized by the Bureau of Export Trade Promotion, Department of Trade and Industry, seemed a deviation from the connotation of "small scale."

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[10] *Id.* at 43.

[11] R.A. No. 6977, Sec. 3.

[12] Penned by Judge Lorifel Lacap-Pahimna; records, Vol. II, pp. 241-248.

Worthy to note is the observation of respondent-intervenors that to be considered a cottage industry, plaintiff should have been registered under the [National Cottage Industries Development Authority (NACIDA)], Section 12 of R.A. [No.] 3470 substantially provides; (sic) that the plaintiff corporation who desires to avail of the benefits and assistance of the law should have registered with the board. In the absence of any indication that affirm the status of the plaintiff corporation as a cottage industry, proof to the contrary may be reasonably accepted, for he who alleged the affirmative of the issue has the burden of proof and in this aspect plaintiff miserably failed.

On the contention that LLDA Resolution No. 41, series of 1997, exempt the plaintiff corporation from the requirements imposed by the LLDA, the interpretation given by [the] government agency itself should be given greater probative value. As a regulatory and quasi-judicial body, the LLDA is mandated to pass upon, approve or disapprove all plans, programs and project[s] proposed by local government offices/agencies, public corporations and private [corporations]. It is in the position to construe its own rules and regulation. By implication, plaintiff corporation arrogates unto itself the privilege bestowed upon a cottage industry. However, there is nothing in the Resolution that includes jewelry making as included in the term cottage industry.[13]

Thus, the RTC held that petitioner must subscribe to the rules and regulations of the LLDA governing clearance.[14]

Petitioner filed a motion for reconsideration of the RTC decision. The same was denied in an Order dated May 17, 2002. Hence, it filed a Notice of Appeal. Subsequently, it filed its appeal with the CA.

In a Decision[15] dated May 30, 2005, the CA dismissed the appeal. The CA brushed aside the issue of whether petitioner qualified as a *cottage industry*. It said that even if petitioner belonged to that category, it still needed to prove that its business

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[13] *Id.* at 246-247.

[14] *Id.* at 247.

[15] *Supra* note 1.

was exempted by law from the coverage of LLDA Resolution No. 41, Series of 1997.

Specifically, the CA cited Section 2(30) of said resolution, to wit:

> **Section 2**. *Exemptions*. The following activities, projects, and installations are exempt from the above subject requirements:
>
> x x x x x x x x x
>
> 30. Cottage Industries, including
> - stuffed toys manufacturing
> - handicrafts, and
> - rattan/furniture manufacturing.[16]

The CA held that, following the principle of *ejusdem generis*, the enumeration in the foregoing provision must be taken to include businesses of the same kind, which were, as averred by the LLDA, not as environmentally critical as those enumerated.[17] Thus, the CA declared that the LLDA did not contemplate the inclusion of the manufacture of jewelry in the exemptions.[18] Additionally, the CA held that the opinions and rulings of officials of the government called upon to execute or implement administrative laws command respect and weight.[19] The CA further held that since petitioner was claiming to be within the exemption, it had the duty to prove that the law intended to include it, or that it is within the contemplation of the law, to be exempted.[20]

Petitioner moved for the reconsideration of the Decision, but the CA denied the same in a Resolution dated January 31, 2006. Hence, petitioner filed this petition for review.

Petitioner argues that the CA committed the following errors:

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[16] *Rollo*, p. 48.

[17] *Id.* at 49.

[18] *Id.* at 48.

[19] *Id.* at 49.

[20] *Id.* at 50.

1. The appellate court erred when it failed or refused to make a definitive pronouncement as to whether petitioner qualifies as a cottage industry. This, even after the appellate court (on page 7 of the assailed Decision) scored the trial court for having "failed to consider the fact that the predicament of Sterling rests primarily on the determination of its status," *i.e.*, whether petitioner is a cottage industry or not.

2. The appellate court erred when it deliberately ignored the provisions of various statutes and regulations pertaining to cottage industries, which if the same had been taken into account and accorded due consideration, would have led the appellate court to correctly conclude that petitioner is indeed a cottage industry.

3. The appellate court erred when it declared, after misapplying the rules of statutory construction, that No. 30 of Sec. 2 of LLDA Resolution No. 41, Series of 1997, does not serve to exempt petitioner from the clearance requirement.[21]

Petitioner also argues that Section 2(30) of LLDA Resolution No. 41, Series of 1997, contains no restriction limiting the exemptions to only certain kinds of cottage industries.[22] It contends that the word "including" connotes a sense of "containing" or "comprising," and not a sense of exclusivity or exclusion. The provision, petitioner points out, is devoid of any restrictive or limiting words; thus, the LLDA should avoid limiting the kinds or classes of *cottage industries* exempted from the clearance requirement.[23]

Next, petitioner avers that the CA erred when it refused to rule on whether it qualified as a *cottage industry*. It claims that the CA deliberately ignored the provisions in various statutes and regulations pertaining to *cottage industries*, which would have led to the conclusion that petitioner was such, and thus would fall within the exemption.[24] Petitioner argues that its total

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

[22] *Id.* at 19-20.

[23] *Id.* at 22.

[24] *Id.* at 24.

assets were worth only ₱312,500.00 during its incorporation, which, under R.A. No. 6977, would qualify it as a *cottage industry*. Further, petitioner argues that, even with the enactment of R.A. No. 8502, the *Jewelry Industry Development Act of 1998*, jewelry-making remains a *cottage industry*.[25]

Finally, petitioner puts in question the factual basis for the issuance of the CDO by the LLDA.

By way of comment, intervenors Maceda, Logarta, and Planas allege that petitioner has been operating illegally, violating ordinances and laws, operating without the required permits and clearances, and continuing its operations despite LLDA's issuance of a CDO.[26] They further allege that petitioner's business is located in an area classified as "R-1" or low density residential zone under Quezon City Ordinance SP-918, Series of 2000, and preceding zoning ordinances. Despite having only an "Office Only" permit, petitioner deliberately uses the premises to manufacture jewelry.[27]

Intervenors also refute petitioner's claim that it is exempted from obtaining the required LLDA clearance because it is a *cottage industry*. First, intervenors allege that petitioner is not registered with the National Cottage Industries Development Authority (NACIDA). Next, intervenors point out that, as admitted by petitioner itself, it employs at least 229 employees who are strangers to the family, and its operations yield annual sales of at least ₱25 million.[28]

Intervenors also aver that, in R.A. No. 8502, there is no provision categorizing jewelry-making as a *cottage industry*. Going by the classification of jewelry-making companies in the Implementing Rules and Regulations of R.A. No. 8502[29] and

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[25] *Id.* at 30.

[26] *Id.* at 145.

[27] *Id.* at 146.

[28] *Id.* at 152.

[29] Rule II – Definition of Terms
Section 1. x x x.

petitioner's financial statements filed with the SEC, which state that petitioner had assets amounting to ₱2,454,459.01 in 1999 and ₱4,628,900.80 in 1998,[30] it cannot be characterized as a micro jewelry enterprise.

Next, intervenors insist that the LLDA has jurisdiction over petitioner. They argue that LLDA Resolution No. 41, Series of 1997, does not in any manner waive the LLDA jurisdiction even over those exempted in the list of activities, projects, and installations. Jurisdiction is provided for by law and cannot be diminished by an act of the agency concerned. In fact, there is no provision of waiver of jurisdiction contained in the said regulation. Exemption from securing prior clearance before implementing an activity does not carry with it a waiver of jurisdiction.[31]

Intervenors also point out that *cottage industry*, as contemplated under LLDA Resolution No. 41, Series of 1997, includes only the activities enumerated therein, namely, stuffed toys manufacturing, handicrafts, and rattan/furniture manufacturing. Further, intervenors aver that, under existing laws, the term *cottage industry* no longer exists and has been deleted. Jewelry-making is now classified as an independent and separate industry under R.A. No. 8502, apart from the general term *cottage industry*. Therefore, petitioner's activity cannot be included as among those exempted from obtaining a clearance from the LLDA

(z) Micro, Small, Medium and Large Scale Jewelry Enterprise – means an enterprise as defined under letter (e), whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situate, must have value falling under the following categories"

a) micro jewelry enterprise	less than ₱1,500,001
b) small scale jewelry enterprise	₱1,500,001 – ₱15,000,000
c) medium jewelry enterprise	₱15,000,001 – ₱60,000,000
d) large scale jewelry enterprise	more than ₱60,000,00.

[30] *Rollo*, p. 153.

[31] *Id.* at 155.

because jewelry-making is not at all mentioned as an exception to the general rule, intervenors claim.[32]

On the other hand, the LLDA and its former General Manager Joaquin G. Mendoza (respondents) also filed their Comment. Respondents narrated that in 1998, petitioner was found to be operating its business without clearance and permit from the LLDA. Accordingly, a Notice of Violation was issued against petitioner. Subsequently, the LLDA conducted a public hearing, which was attended by petitioner, its company physician, and legal counsels. During the hearing, petitioner committed to relocate its facilities. Meanwhile, the same would remain padlocked to erase all doubts of its continued operation despite the Closure Order from the Quezon City Mayor's Office.[33] After the public hearing, the LLDA issued the assailed CDO against petitioner. Thereafter, proceedings before the RTC, then the CA, ensued, resulting in the now-assailed decision and resolution.

In their Comment, respondents posit that petitioner is not a *cottage industry* within the contemplation of the law. They argue that to qualify as such, the conditions in the laws must be complied with. Thus, while metalcraft activities are considered as *cottage industry*, asset requirements and NACIDA registration requirements must also be complied with.[34]

Respondents contend that petitioner cannot be considered a *cottage industry* considering that it has assets way above the threshold fixed in the law. Respondents aver that what petitioner claims as its assets amounting to ₱312,500.00 refer only to the minimum paid-up capital stock required by law for purposes of incorporation and registration with the SEC. Respondents argue that petitioner would have other properties contributed and owned for purposes of starting the enterprise, such as furniture, fixtures, machinery, and equipment. Likewise, respondents point out that petitioner actually has a capitalization of ₱5 million, of which ₱1.25 million had been subscribed. The amount subscribed

[32] *Id.* at 156.

[33] *Id.* at 181.

[34] *Id.* at 190.

minus the paid-up capital is a subscription receivable from the incorporators and is an asset.[35]

Next, respondents argue that the CA did not err in ruling that petitioner is not exempted from securing a clearance from the LLDA. The respondents posit that, under LLDA Resolution No. 41, Series of 1997, the *cottage industries* exempted are those of the same nature and category as those enumerated therein, following the principle of *ejusdem generis*.[36] The activities enumerated, respondents claim, are those whose operations are basically dry and whose environmental impact is not so significant.[37] Likewise, respondents argue that, following the principle *expressio unius est exclusio alterius*, the express mention of the three activities excluded all other *cottage industries*. If the LLDA had intended to exempt all types of *cottage industries*, it would not have made an enumeration of those exempt activities, respondents posit.[38]

In its Reply, petitioner claims that intervenors are illegally suppressing petitioner's legitimate business because it is competing with the jewelry business of intervenor Logarta's cousin.[39] Petitioner claims that Logarta's cousin also operates his business within the same area as its facilities. It further claims that there is a total of 34 other businesses, including a manufacturer of garments, a wholesaler of cement, and a manufacturer of leather bags, operating in the same supposedly-residential zone where its office is located.[40] Petitioner also accuses intervenors Maceda and Planas of going to court with "unclean hands," considering that they also run businesses in the same area.[41]

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[35] *Id.* at 193-194.

[36] *Id.* at 198.

[37] *Id.* at 197.

[38] *Id.*

[39] *Id.* at 209.

[40] *Id.* at 212.

[41] *Id.* at 212-213.

Petitioner also denies that Mrs. Faustmann, then operating Unson, Faustmann and Company, Inc., reneged on a promise, made in 1992, to relocate the company's operations. Petitioner claims that Mrs. Faustmann was pressured into signing the Agreement before the *Lupon*, through threats and intimidation. As to the later complaint, petitioner claims that intervenors succeeded in pressing residents to sign the complaint, but those who signed were in fact from other streets, further away from its office.[42]

Petitioner also claims that there was no public hearing conducted before the Quezon City Mayor's Office issued and enforced the CDO.

Petitioner likewise insists that its business qualifies as a *cottage industry*.[43] It maintains that pertinent laws have identified jewelry-making as a *cottage industry*. The Cottage Industry Technology Center (CITC) designates jewelry-making as one of the industries it actively assists. Petitioner also maintains that its paid-up capital qualifies its business as a *cottage industry*.[44]

The petition is unmeritorious; hence, the same is denied.

The main issue to be resolved is whether petitioner is exempted from complying with the requirement to obtain a clearance from the LLDA to operate its business.

Petitioner insists that it is exempted from complying with the clearance requirements because it is a *cottage industry*. In order to resolve this issue, a review of the laws pertinent to cottage industries is in order.

Section 11 of R.A. No. 3470, approved on June 16, 1962, defined *cottage industry* as an "economic activity in a small scale which is carried on mainly in the homes or in other places for profit and which is mainly done with the help of the members of the family." Among the activities considered as a *cottage*

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[42] *Id.* at 217.

[43] *Id.* at 233.

[44] *Id.* at 237.

industry is "metalcraft such as making of jewelries, knives, boloes (sic), scissors, razors, silverwares and brassworks (sic)."[45]

The same law required persons, corporations, partnerships, or associations that wished to avail of the benefits of the law to register with the NACIDA.[46]

In 1968, R.A. No. 5326 amended certain sections of R.A. No. 3470. In particular, Section 11 was amended to read:

SEC. 11. *Definition*. – The term 'cottage industry' as used in this Act shall mean an economic activity in a small scale carried on mainly in the homes or in other places for profit and mainly done with the help of the members of the family with capitalization not exceeding fifteen thousand pesos. The term shall also include economic activities carried on by students of public and private schools, within school premises, as a cooperative effort, under supervision of a teacher or other person approved by and acting under the supervision and control of school authorities, either as part of or in addition to ordinary vocational training, provided all profits shall accrue to the students working therein. It shall include the following: x x x (5) metal craft such as making of jewelries, knives, boloes (sic), scissors, razors, silverwares and brassworks (sic); x x x All cottage industries shall be owned and operated by Filipino citizens, or by a corporation, partnership or cooperative, at least seventy-five per cent of the capital or investment of which is owned by Filipino citizens. All members of its Board of Directors shall be Filipino citizens.

The word capitalization as used in this section shall mean the total current assets and fixed assets, excluding the value of the land and building leased, rented and/or used at least six months of each year. For purpose of this Act, any and all branches, agencies, outlets or divisions of a licensed cottage industry shall be collated to determine the capitalization thereof.

R.A. No. 3470 was further amended on October 22, 1975, by Presidential Decree (P.D.) No. 817. The first sentence of Section 11 was amended, to read:

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[45] R.A. No. 3470, Sec. 11(5).

[46] Sec. 12.

The term "cottage industry" as used in this Act shall mean an economic activity carried on in the homes or in other places for profit, with a capitalization of not exceeding ₱100,000 at the time of registration.

In 1981, then President Ferdinand Marcos issued P.D. No. 1788, the *Cottage Industries Development Decree of 1981*, amending and consolidating R.A. Nos. 3470 and 5326, P.D. No. 817, and other related Laws, Decrees, Executive Orders, Letters of Instructions, and Acts concerning the NACIDA. Section 10 of P.D. No. 1788 states:

> Section 10. Cottage Industry – The term "cottage industry" shall mean a modest economic activity for profit using primarily indigenous raw materials in the production of various articles of the country. *Provided*, however, that all cottage industries shall be owned and operated by Filipino citizens, or by corporations, partnerships, or cooperatives at least seventy-five percent (75%) of the capital investment of which shall be owned by Filipino citizens. *Provided, further*, that the total assets of which shall not exceed one hundred thousand pesos (₱100,000.00) at the time of registration with the NACIDA. Provided, finally that the maximum total assets allowable for cottage industries for purposes of registration may be modified and/or increased accordingly by the NACIDA Board subject to the approval of the President of the Republic of the Philippines.
>
> For facility of implementation, coordination and statistical gathering, cottage industries shall be classified as follows:
>
> x x x x x x x x x
>
> a) Metalcraft Industry – That sector using metals or its alloys as principal raw material component in producing articles such as brasswares, cutlery items, fabricated tools, implements and equipment and other items requiring a certain degree of craftsmanship in the making thereof including the making of jewelry items involving the use metals and/or its alloys in combination with semiprecious or artificial stones.

Executive Order (E.O.) No. 917, issued on October 15, 1983, amended the definition of *cottage industry* by increasing the capitalization requirement to a maximum of ₱250,000.00, which

amount may be modified or increased accordingly, subject to the approval of the President.[47]

In 1986, the National Economic Development Authority (NEDA) redefined cottage, small and medium scale industries. Considered as cottage industries were enterprises, excluding agriculture, with total assets after financing of over ₱500,000.00 but less than ₱5 million.[48]

When Corazon Aquino became President, she issued E.O. No. 133, reorganizing the Department of Trade and Industry (DTI). Section 18 thereof provided that the NACIDA was reorganized into the CITC, and its functions, other than technology development and training, were transferred to the Bureau of Small and Medium Business Development and relevant line operating units of the DTI.

In 1990, Congress enacted R.A. No. 6977, the *Magna Carta for Small Enterprises*. The capitalization for a *cottage enterprise* was changed, *viz.*:

> SEC. 3. Small and Medium Enterprises as Beneficiaries. – "Small and medium enterprise" shall be defined as any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant, and equipment are situated, must have value falling under the following categories:
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> | | | |
> |---|---|---|
> | micro | : | less than ₱50,000 |
> | cottage | : | ₱50,001 – ₱500,000 |
> | small | : | ₱500,001 – ₱5,000,000 |
> | medium | : | ₱5,000,001 – ₱20,000,000 |
>
> In a generic sense, all enterprises with total assets of Five million pesos (₱5,000,000) and below shall be called small enterprises.

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[47] Executive Order No. 917, Sec. 1.

[48] NEDA Resolution No. 1, Series of 1986.

R.A. No. 6977 was amended by R.A. No. 8289 in 1998. Amending Section 1 of R.A. No. 6977, the term *cottage industry* or *cottage enterprise* was completely eliminated:

> **SEC. 3. *Small and Medium Enterprise as Beneficiaries***. – "Small and Medium Enterprise" shall be defined as any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant, and equipment are situated, must have value falling under the following categories:
>
> | | | |
> |---|---|---|
> | micro | : | less than ₱1,500,001 |
> | small | : | ₱1,500,001 – ₱15,000,000 |
> | medium | : | ₱15,000,001 – ₱60,000,00 |
>
> The above definitions shall be subject to review and adjustment by the said Council *motu proprio* or upon recommendation of sectoral organization(s) taking into account inflation and other economic indicators. The Council may use as variables the number of employees, equity capital and asset size.

Finally, in 1998, Congress enacted R.A. No. 8502, the *Jewelry Industry Development Act of 1998*, a law to support, promote, and encourage the growth and development of the predominantly small and medium scale jewelry industries. R.A. No. 8502 did not use the term *cottage industry*; instead, it characterized businesses engaged in jewelry-making as:

a) micro jewelry enterprise	less than ₱1,500,001
b) small scale jewelry enterprise	₱1,500,001 – ₱15,000,000
c) medium jewelry enterprise	₱15,000,001 – ₱60,000,000
d) large scale jewelry enterprise	more than ₱60,000,000.[49]

On the other hand, the LLDA was created by R.A. No. 4850 to carry out the development of the Laguna Lake region with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and

[49] *Supra* note 29.

ecological systems, and prevention of undue ecological disturbances, deterioration, and pollution.[50]

The LLDA was granted the power to pass upon and approve or disapprove all plans, programs, and projects proposed by the local government offices/agencies within their regions, by public corporations, and by private persons or enterprises, where such plans, programs and/or projects are related to those of the Authority for the development of the region, as well as to issue the necessary clearance for the approved plans, programs and/or projects.[51]

Thus, in LLDA Resolution No. 41, Series of 1997, the LLDA specified the development activities, projects, and installations required to secure a clearance from the LLDA before these can be constructed, operated, maintained, expanded, modified, or implemented by any government office/agency or government corporation or private person or enterprise.[52] Section 2 of the LLDA Resolution then set out the activities exempted from complying with the clearance requirement, to wit:

> Section 2. *Exemptions*. The following activities, projects, [or] installations are exempted from the above subject requirements:
>
> x x x x x x x x x
>
> 30. Cottage industries including
> - stuffed toys manufacturing
> - handicrafts and
> - rattan/furniture manufacturing.

Contrary to the CA's pronouncement and to respondents' claim, the provision did not restrict the exemption to the three activities therein mentioned.

The word *include* means "to take in or comprise **as a <u>part</u> of a whole**."[53]

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[50] R.A. No. 4850, Sec. 1.

[51] R.A. No. 4850, Sec. 4.

[52] 5th paragraph.

[53] Webster's All-In-One Dictionary and Thesaurus, 2008 ed. (Emphasis supplied.)

Thus, this Court has previously held that it necessarily conveys the very idea of non-exclusivity of the enumeration.[54] The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only.[55] The maxim *expressio unius est exclusio alterius* does not apply when words are mentioned by way of example.[56] Said legal maxim should be applied only as a means of discovering legislative intent which is not otherwise manifest.[57]

In another case, the Court said:

> [T]he word "involving," when understood in the sense of "including," as in including *technical or financial assistance*, necessarily implies that there are activities other than *those that are being included*. In other words, if an agreement *includes* technical or financial assistance, there is [–] apart from such assistance – something else already in[,] and covered or may be covered by, the said agreement.[58]

As the regulation stands, therefore, all *cottage industries including*, but not limited to, those enumerated therein are exempted from securing prior clearance from the LLDA. Hence, the CA erred in ruling that only the three activities enumerated therein are exempted.

Next, the Court must determine if petitioner is in fact a *cottage industry* entitled to claim the exemption under LLDA Resolution No. 41, Series of 1997.

That jewelry-making is one of the activities considered as a *cottage industry* is undeniable. The laws bear this out. However, based on these same laws, the nature of the activity is **only**

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[54] *Binay v. Sandiganbayan*, 374 Phil. 413, 440 (1999).

[55] *Coconut Oil Refiners Association, Inc. v. Hon. Torres*, 503 Phil. 42, 56 (2005), citing *Gomez v. Ventura and Board of Medical Examiners*, 54 Phil. 726 (1930); *id.*

[56] *Coconut Oil Refiners Association, Inc. v. Hon. Torres*, *supra*, at 56.

[57] *Id.*

[58] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 486 Phil. 754, 796 (2004).

one of several factors to be considered in determining whether the same is a *cottage industry*.

In view of the emphasis in law after law on the capitalization or asset requirements, it is crystal clear that the same is a defining element in determining if an enterprise is a *cottage industry*.

Petitioner argues that its assets amount to only ₱312,500.00, representing its paid-up capital at the time of its SEC registration. The law then in force was R.A. No. 6977, which, to recapitulate, states:

> SEC. 3. Small and Medium Enterprises as Beneficiaries. – "Small and medium enterprise" shall be defined as any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation **whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant, and equipment are situated,** must have value falling under the following categories:
>
> | | | |
> |---|---|---|
> | Micro | : | less than ₱50,000 |
> | Cottage | : | ₱50,001 – ₱500,000 |
> | small | : | ₱500,001 – ₱5,000,000 |
> | medium | : | ₱5,000,001 – ₱20,000,000 |
>
> In a generic sense, all enterprises with total assets of Five million pesos (₱5,000,000) and below shall be called small enterprises.

Accordingly, it should be considered as a *cottage industry*, petitioner insists.

However, petitioner's contention that its total assets amounts only to ₱312,500.00 is misleading.

The ₱312,500.00 represents the total amount of the capital stock already subscribed and paid up by the company's stockholders. It does not, however, represent the totality of its assets, even at the time of its registration. By the expert opinion of petitioner's own consultant, independent CPA Maximiano P. Sorongon, Jr., it does not mean that the paid-up capital is the only source of funds of the corporation for it to support its recurring operational requirements, as well as its increased

financial requirements later on, as and when the business grows and expands.[59]

In other words, its paid-up capital is not the only asset of the company. Under R.A. No. 6977, the term *total assets* was understood to mean "inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant, and equipment are situated."

Assets consist of property of all kinds, real and personal, tangible and intangible, including, *inter alia*, for certain purposes, patents and causes of action which belong to any person, including a corporation and the estate of a decedent. It is the entire property of a person, association, corporation, or estate that is applicable or subject to the payment of his, her, or its debts.[60]

Consider these details as found by the Board of Investments and set forth in a Memorandum dated June 8, 1999 addressed to the undersecretary of the DENR, listing the basic information of petitioner as follows:

Name	: Sterling Selections Corporation
Address	: 55-A, 11th St., New Manila, Quezon City
Business Activity	: Producer of gift items made of silver
Chairman & Managing Director	: Asuncion Maria S. de Faustmann
SEC Registration	: A 1996-10845 dated December 2, 1996
BOI Accreditation	: 98-003 dated August 13, 1998 under R.A. 8502
BETP Accreditation	: 98-0010 dated July 17, 1998 under R.A. 7844
No. of Employees	: 189 (Direct Labor; Salaries & Allowances - ₱16,064,000)
Value of Export Sales	: ₱19,732,692.00
Total Sales	: ₱37,160,340.00 (based on 1998 ITR)[61]

The same figures are reflected in petitioner's own income statement.[62] Petitioner cannot insist on using merely its paid-up capital as basis to determine its assets. The law speaks of **total**

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[59] *Rollo*, p. 311.

[60] Black's *Law Dictionary*, 5th Edition.

[61] Records, Vol. I, p. 182.

[62] *Rollo*, p. 332.

assets. Petitioner's own evidence, *i.e.*, balance sheets prepared by CPAs it commissioned itself, shows that it has assets other than its paid-up capital. According to the Consolidated Balance Sheet presented by petitioner, it had assets amounting to ₱4,628,900.80 by the end of 1998, and ₱1,746,328.17 by the end of 1997.[63] Obviously, these amounts are over the maximum prescribed by law for cottage industries.

Thus, the conclusion is that petitioner is not a *cottage industry* and, hence, is not exempted from the requirement to secure an LLDA clearance.

Further militating against petitioner's claim is the RTC's astute observation that being an accredited exporter recognized by the Bureau of Export Trade Promotion (BETP) of the DTI seemed like a deviation from the connotation of "small scale."[64]

The Court notes that, to be accredited by the BETP as an exporter, there are strict standards that the enterprise must meet. Under R.A. No. 7844, the *Export Development Act of 1994*, an exporter is any person, natural or juridical, licensed to do business in the Philippines, engaged directly or indirectly in the production, manufacture or trade of products or services, which earns at least fifty percent (50%) of its normal operating revenues from the sale of its products or services abroad for foreign currency.[65]

The same law provides for tax incentives to exporters, with the qualification that the incentives shall be granted only upon presentation of their BETP certification of the exporter's eligibility.[66] Qualified exporters applying for BETP certification must present a report of their export revenue/sales for the immediately preceding year.[67]

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[63] *Id.* at 330.

[64] Records, Vol. II, p. 246.

[65] R.A. No. 7844, Sec. 4(a).

[66] R.A. No. 7844, Sec. 16.

[67] No. 3 PROCEDURE FOR ACCREDITATION OF EXPORTERS, DTI Administrative Order No. 3, Series of 1995.

DTI Administrative Order No. 3, Series of 1995, provides for the mechanisms of accreditation for exporters *vis-à-vis* the tax incentives granted under R.A. No. 7844. Under *Procedure for Accreditation of Exporters*, the following schedule of application fees was set forth:

Export Value Per Year	Application Fee
$1M – 5M Max.	₱1,000.00
Above $1M – 5M Max.	2,000.00
Above $5M – 10M Max.	3,000.00
Above $10M – 15M Max.	4,000.00
Above $15M	5,000.00[68]

Consequently, an exporter must be able to generate and export enough products, with an export value of $1 million per year, in order to be accredited by the BETP for tax incentives. Petitioner's accreditation shows that it complied with this requirement.

Based on the foregoing, it is clear that petitioner cannot be considered a *cottage industry*. Therefore, it is not exempted from complying with the clearance requirement of the LLDA.

It is a doctrine of long-standing that factual findings of administrative bodies on technical matters within their area of expertise should be accorded not only respect but even finality if they are supported by substantial evidence even if they are not overwhelming or preponderant.[69] Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with regulation of activities coming under the special and technical training and knowledge of such agency. The exercise of administrative discretion is a policy decision and a matter that is best discharged by the government agency concerned and not by the courts.[70]

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[68] No. 3.2, DTI Administrative Order No. 3, Series of 1995.

[69] *Republic of the Philippines v. Manila Electric Company*, 440 Phil. 389, 399 (2002), citing *Casa Filipina Realty Corporation v. Office of the President*, 311 Phil. 170, 180 (1995).

[70] *Yazaki Torres Manufacturing, Inc. v. Court of Appeals*, G.R. No. 130584, June 27, 2006, 493 SCRA 86, 95.

The motives of the intervenors for filing the complaint are no longer relevant. Regardless of what these motives may have been, the fact remains that the LLDA found petitioner to have violated the pertinent environmental and regulatory laws.

The Court recognizes the right of petitioner to engage in business and to profit from its industry. However, the exercise of the right must conform to the laws and regulations laid down by the competent authorities.

WHEREFORE, the foregoing premises considered, the Petition is *DENIED.* The Decision dated May 30, 2005 and the Resolution dated January 31, 2006 of the Court of Appeals in CA-G.R. SP No. 79889 are *AFFIRMED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177260. March 30, 2011]

LOTTO RESTAURANT CORPORATION, represented by SUAT KIM GO, *petitioner, vs.* **BPI FAMILY SAVINGS BANK, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; STIPULATIONS IN A CONTRACT MUST BE READ TOGETHER AND GIVEN EFFECT AS THEIR MEANING WARRANT; EXEMPLIFIED.— As held in *Manila International Airport Authority v. Judge Gingoyon,* various stipulations in a contract must be read together and

given effect as their meanings warrant. Taken together, paragraphs 7 and 8 intended the 11.5% interest rate to apply only to the first year of the loan. The Court has previously upheld as valid the *proviso* in loans that the interest rate would be made to depend on the prevailing market rate. Such provision does not signify an automatic increase in the interest. It simply means that the bank may adjust the interest according to the prevailing market rate. This may result to either an increase or a decrease in the interest.

2. ID.; ID.; MORTGAGE; FORECLOSURE IS A NECESSARY CONSEQUENCE OF NON-PAYMENT OF MORTGAGE INDEBTEDNESS; EFFECT, EXPLAINED.— The Court held in *Equitable PCI Bank, Inc. vs. OJ-Mark Trading, Inc.* that foreclosure is but a necessary consequence of non-payment of mortgage indebtedness. The creditor-mortgagee has the right to foreclose the mortgage, sell the property, and apply the proceeds of the sale to the satisfaction of the unpaid loan. At any rate, not all is lost for Lotto. It could avail itself of lower interest where the prevailing market rate warrants. And, under Section 17 of the General Banking Law, it has the right to redeem the property by paying the amount due, with interest rate specified under the mortgage deed, as well as all the costs and expenses incurred by the bank.

APPEARANCES OF COUNSEL

Romel H. Fontanilla for petitioner.
Benedicto Versoza Felipe & Burkley for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about a bank's right under the loan agreement to adjust the loan interest from a fixed rate to the prevailing market rate and, further, to foreclose the real estate mortgage that secures the same upon the borrower's default.

The Facts and the Case

On December 23, 1999 petitioner Lotto Restaurant Corporation (Lotto) got a loan of ₱3,000,000.00 from the DBS Bank (DBS) at an interest rate of 11.5% *per annum*. The promissory note it executed provided that Lotto would pay DBS a monthly amortization of ₱35,045.69 for 180 months. To secure payment of the loan, Lotto, represented by Suat Kim Go (Go), its General Manager, mortgaged to DBS a condominium unit that belonged to it.[1]

Lotto paid its monthly amortizations for 12 months from December 24, 1999 to December 24, 2000. But in January 2001, after DBS increased the interest to 19% *per annum*, Lotto contested the increase and stopped paying the loan. After respondent BPI Family Savings Bank, Inc. (BPI) acquired DBS, Lotto tried to negotiate with BPI for reduction of interest but the latter agreed to reduce it to only 14.7% *per annum*, which was still unacceptable to Lotto.[2]

On October 21, 2002 BPI foreclosed the mortgage on Lotto's condominium unit[3] to satisfy its unpaid claim of ₱5,283,470.26, which included interest, penalties, fire insurance premium, attorney's fees, and estimated foreclosure expenses. BPI's computation applied an interest rate of 19% *per annum* for the period December 24, 2000 to November 24, 2001; and 14.7% *per annum* for the period December 24, 2001 to October 10, 2002.[4]

To stop the foreclosure, Lotto filed against BPI with the Regional Trial Court (RTC) of Manila[5] in Civil Case 02-105415 an action for reformation or annulment of real estate mortgage with prayer for a temporary restraining order (TRO) and

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[1] Condominium Certificate of Title 6062-Ind.

[2] Records, pp. 4-5.

[3] *Id.* at 14-17.

[4] *Id.* at 16.

[5] Branch 36.

preliminary injunction.[6] The RTC issued a TRO on January 3, 2003 and a preliminary injunction on February 6, 2003,[7] enjoining the foreclosure sale of the condominium unit. Mediation in the case failed.[8]

On January 11, 2005 the RTC rendered a decision in Lotto's favor,[9] finding that DBS breached the stipulations in the promissory note when it unilaterally increased the interest rate on its loan from 11.5% to 19% *per annum*. Further, the RTC held that the mortgage on the condominium unit was void since the Lotto Board of Directors did not authorize Go to sign the document. The RTC directed the Register of Deeds to cancel the encumbrance on Lotto's title and ordered Lotto to pay BPI its loan of ₱2,990,832.00 at ₱35,045.69 a month, less the amortizations that it already paid.

Aggrieved, BPI appealed to the Court of Appeals (CA), which reversed the RTC Decision on November 22, 2006[10] in CA-G.R. CV 84701. The CA held that Lotto was estopped from questioning the validity of the promissory note and the real estate mortgage since, having authorized Go to take out a loan from the bank, it followed that it also authorized her to provide the security that the loan required. The CA also clarified that Lotto's gross loan was ₱3,000,000.00; the ₱2,990,832.00 that the RTC referred to was the net proceeds of the loan.

As to the increase in the interest rate, the CA found that the 11.5% rate provided in the promissory note pertained only to the period from December 24, 1999 to December 24, 2000. The note provided that, upon the lapse of that period, the loan would already bear an interest based on the prevailing market rate. The increase from 11.5% to 19% for the subsequent period was thus valid. The CA upheld the mortgage and lifted the

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[6] Records, pp. 3-8.

[7] *Id.* at 72.

[8] *Id.* at 98.

[9] *Rollo,* pp. 30-41. Penned by Judge Wilfredo D. Reyes.

[10] *Id.* at 75-95. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr.

RTC's writ of preliminary injunction. With the denial of its motion for reconsideration,[11] Lotto filed the present petition for review.

The Issues Presented

The issues in this case are:

1. Whether or not DBS, now BPI, validly adjusted the rate of interest on Lotto's loan from 11.5% to 19% *per annum* beginning on December 24, 2000; and

2. Whether or not BPI has the right to foreclose the real estate mortgage for non-payment of the loan.

The Court's Ruling

One. Lotto insists that DBS had no right to unilaterally increase the interest rate on its loan from 11.5% to 19% *per annum* after the passage of a year. Lotto argues that DBS could, under the terms and conditions of the promissory note, make such adjustments only after 180 months following the execution of the promissory note.

But, paragraphs 7 and 8 of the promissory note[12] clearly provide that the 11.5% interest rate *per annum* applied only to the first year of the loan. Thus:

7. EFFECTIVE INTEREST RATE (nr=er) ___**11.5***___ %p.a.
(Method of Computation attached) **12.24.99-12.24.2000**

8. SCHEDULE OF PAYMENT

a. Single payment due on _____ ₱_____
(Date)

b. Total Installment Payments _____ ₱_____
Payable in **180***_____ months/year
(no. of payments) *** Thereafter interest to be based on prevailing market rate.**
at ₱_____35,045.69_____ each installment_____
1.24.00 (sic)-12.24.00 (Emphasis added)

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[11] *Id.* at 130-131.

[12] Records, p. 13.

It is plainly clear from paragraph 7 above that the 11.5% *per annum* interest was to apply to the period December 24, 1999 to December 24, 2000 ("12.24.99-12.24.00"). They form but one statement of the stipulated interest rate and the period to which such interest rate applied. Additionally, the statement of applicable interest rate bears an asterisk sign, which footnoted the information that "[t]hereafter interest to be based on prevailing market rate." This means that the rate of interest would be adjusted to the prevailing market rate after December 24, 2000.

Lotto of course calls attention to the statement down in paragraph 8 of the promissory note (Schedule of Payment), particularly in its sub-paragraph b, that the "Total Installment Payments" are "Payable in 180* months x x x." Lotto claims that the asterisk sign after the figure "180" means that the interest would be adjusted to the prevailing market rate at the end of 180 months. But Lotto's interpretation would have a ridiculous implication since that "180 months" is the statement of the pay out period for the loan. The loan would have been paid after 180 months and, therefore, there would be no occasion for charging Lotto a new rate of interest on a past loan.

Besides such interpretation would directly contravene the clear provision of paragraph 7 that the 11.5% *per annum* interest was to apply only to the period December 24, 1999 to December 24, 2000 ("12.24.99-12.24.00"). As held in *Manila International Airport Authority v. Judge Gingoyon*,[13] various stipulations in a contract must be read together and given effect as their meanings warrant. Taken together, paragraphs 7 and 8 intended the 11.5% interest rate to apply only to the first year of the loan.

The Court has previously upheld as valid the *proviso* in loans that the interest rate would be made to depend on the prevailing market rate. Such provision does not signify an automatic increase in the interest. It simply means that the bank may adjust the interest according to the prevailing market

[13] 513 Phil. 43, 50-51 (2005).

rate. This may result to either an increase or a decrease in the interest.[14]

Two. Lotto claims that the real estate mortgage that Go executed was void since it did not authorize her to execute the same and since DBS did not sign it. But Lotto admitted in its complaint below that Go had obtained a loan from DBS on its behalf, with the condominium unit as collateral.[15] With this admission, Lotto should be deemed estopped from assailing the validity and due execution of that mortgage deed.

As to BPI's right to foreclose, the records show that Lotto defaulted in its obligation when it unjustifiably stopped paying its amortizations after the first year. Consequently, there is no question that BPI (which succeeded DBS) had a clear right to foreclose on Lotto's collateral. The Court held in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*[16] that foreclosure is but a necessary consequence of non-payment of mortgage indebtedness. The creditor-mortgagee has the right to foreclose the mortgage, sell the property, and apply the proceeds of the sale to the satisfaction of the unpaid loan.[17]

At any rate, not all is lost for Lotto. It could avail itself of lower interest where the prevailing market rate warrants. And, under Section 47[18] of the General Banking Law, it has the right

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[14] *Polotan, Sr. v. Court of Appeals (Eleventh Division)*, 357 Phil. 250, 260 (1998).

[15] Records, p. 4.

[16] G.R. No. 165950, August 11, 2010.

[17] *Ramos v. Sarao*, 491 Phil. 288, 300 (2005).

[18] Section 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the

to redeem the property by paying the amount due, with interest rate specified under the mortgage deed, as well as all the costs and expenses incurred by the bank.[19]

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the November 22, 2006 decision and the March 28, 2007 resolution of the Court of Appeals in CA-G.R. CV 84701.

SO ORDERED.

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

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sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

[19] *Supra* note 16.

FIRST DIVISION

[G.R. No. 177324. March 30, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALD DELA CRUZ *Y* LIBANTOCIA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF REGULATED OR PROHIBITED DRUGS; ELEMENTS.— In a prosecution for illegal sale of regulated or prohibited drugs, conviction can be had if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.

2. ID.; ID.; PROVIDES THE APPREHENDING AUTHORITIES THE PROPER PROCEDURE TO FOLLOW IMMEDIATELY AFTER SEIZURE AND CONFISCATION OF DANGEROUS DRUGS; PURPOSE THEREOF.— Section 21, paragraph 1 of Article II of Republic Act No. 9165 instructs the apprehending authorities on the proper procedure they should follow immediately after seizure and confiscation of dangerous drugs: (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 expounds on

the procedure, thus: (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. In *People v. Naquita*, we expressly declared that non-compliance with Section 21 of Republic Act No. 9165 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREOF DESERVES GREAT WEIGHT; RATIONALE.— In a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. Not finding any arbitrariness or oversight

on the part of the RTC and the Court of Appeals, we have no reason to set aside their factual findings.

4. ID.; ID.; ID.; IN CASES INVOLVING VIOLATIONS OF DANGEROUS DRUGS ACT, CREDENCE IS GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS; APPLICATION IN CASE AT BAR.— It is equally settled that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Dela Cruz utterly failed to prove that in testifying against him, PO2 Ocampo was motivated by reasons other than the duty to curb the sale of prohibited drugs. There is no proof of any ill motive or odious intent on the part of the police authorities to impute falsely such a serious crime to Dela Cruz.

5. ID.; ID.; DENIAL AND FRAME-UP; INHERENTLY WEAK DEFENSES; EXPLAINED.— Dela Cruz's denial of the charges and claim of frame-up are inherently weak defenses. In drug cases, entrapment is a normal police technique to catch the culprit *in flagrante delicto*. On the other hand, denial and frame-up are the usual defenses set up by the accused. Affirmative statements are given greater weight than mere denials. We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can be easily concocted, hence, commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the police officers' alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. Bare denials cannot prevail over the positive identification by PO2 Ocampo of Dela Cruz as the person who sold him the *shabu*.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF REGULATED OR PROHIBITED DRUGS; IMPOSABLE PENALTY.— Section 5, Article II of Republic Act No. 9165 stipulates that the illegal sale of prohibited or regulated drugs shall be penalized with life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Considering said provision, we sustain the RTC and the Court of Appeals in imposing upon Dela Cruz: (1) the penalty of life imprisonment, since there was no mitigating or aggravating circumstance attending Dela Cruz's violation of the law; and (2) the minimum amount of ₱500,000.00 fine, given that the *shabu* obtained from Dela Cruz in the buy-bust operation weighed only 0.20 grams.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is the Decision[1] dated January 22, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01579, which affirmed the Decision[2] dated September 7, 2005 of the Regional Trial Court (RTC) of Quezon City, Branch 103, in Criminal Case No. Q-03-116311, finding accused-appellant Reynald dela Cruz *y* Libantocia (Dela Cruz) guilty of violation of Section 5, Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 2-12; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez and Vicente S.E. Veloso, concurring.

[2] CA *rollo*, pp. 16-19.

Dela Cruz was charged with violation of Section 5, Article II[3] of Republic Act No. 9165, in an Information[4] which reads:

That on or about the 30th day of March 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did the (sic) and there willfully and unlawfully sell, dispense, deliver, transport or distribute or act as broker in the said transaction, 0.20

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[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

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

(ZERO POINT TWENTY) gram of Methamphetamine Hydrochloride, a dangerous drug.

During arraignment, Dela Cruz, assisted by his counsel *de parte*, entered a plea of not guilty. Thereafter, trial on the merits ensued.

The prosecution presented as witnesses Police Officer (PO) 3 Bernard Amigo (Amigo) and PO2 Jaime Ocampo (Ocampo).

The prosecution's version of events as testified by the aforesaid witnesses is as follows:

At about 10:00 a.m. on March 30, 2003, an informant called the Cubao Police Station 7 and reported to the duty desk officer that someone was selling *shabu* at Yale Street, Cubao, Quezon City. A team composed of four police officers was formed to conduct an entrapment, headed by PO2 Jerry Sanchez (Sanchez). PO2 Ocampo was designated as poseur-buyer. Before the dispatch, two pieces of ₱100.00 bills were given to PO2 Ocampo as buy-bust money,[5] which he marked with his initials "JO".

Upon arrival of the police team at Yale Street, PO2 Ocampo spotted a person selling drugs on said street. PO2 Ocampo and the informant approached the person, who was later identified as Dela Cruz. The informant introduced PO2 Ocampo to Dela Cruz as a person interested to buy *shabu*. Dela Cruz then asked how much *shabu* PO2 Ocampo wanted to buy. PO2 Ocampo answered he would like to purchase ₱200.00 worth of *shabu*. When PO2 Ocampo gave two ₱100.00-bills to Dela Cruz, the latter handed over in exchange a plastic sachet to PO2 Ocampo. PO2 Ocampo examined the contents of the plastic sachet, and believing that the same to be *shabu*, he tapped Dela Cruz's shoulder, which was the pre-arranged signal to the other members of the police team.[6]

The rest of the police team rushed to the crime scene and identified themselves as police officers. PO2 Ocampo arrested Dela Cruz and recovered from the latter the two ₱100.00-bills

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[5] TSN, February 9, 2004, pp. 3-6.

[6] *Id.* at 6-10.

used as buy-bust money. While PO2 Ocampo kept possession of the buy-bust money, he passed the plastic sachet containing the *shabu* to his companion. PO2 Ocampo marked the plastic sachet with "JO".[7] The plastic sachet was brought to the Philippine National Police (PNP) Crime Laboratory for examination of its contents,[8] which was later confirmed as *methylamphetamine hydrochloride*,[9] more popularly known as *shabu*.

At the police station, the police team turned over Dela Cruz to PO3 Amigo. PO3 Amigo then assisted in the execution of PO2 Ocampo's Affidavit of Poseur-Buyer and PO2 Sanchez's Affidavit of Arrest. PO3 Domingo prepared the request for laboratory examination of the plastic sachet and its contents.

For its part, the defense presented the testimonies of the accused, Dela Cruz; Dela Cruz's aunt, Adoracion Salcedo (Salcedo); and Dela Cruz's *kumare*, Nora Cruz (Nora).

Dela Cruz denied any criminal liability and claimed frame-up by the police. Dela Cruz insisted that at around 11:00 a.m. on March 30, 2003, he was fixing the trash can in an *eskinita* between Yale and Oxford Streets when two police officers, conducting a raid in said place, frisked and arrested him, then brought him to Cubao Police Station 7.[10] Dela Cruz explained that he made trash cans for free because he wanted to teach his *kumpare* and *inaanak*, who lived in the area, to clean up their place. He also made trash cans for the area surrounding his residence at Kamias, Quezon City.[11] He denied the charge that he was selling *shabu*. He did admit to selling merchandise, such as wooden tops, *banig, etc.*, but at the time of his arrest, he had no merchandise with him for he left these at his house.[12]

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[7] *Id.* at 10-12.

[8] *Id.* at 12.

[9] Records, p. 6.

[10] TSN, September 22, 2004, pp. 7-10.

[11] *Id.* at 4.

[12] *Id.* at 6.

Salcedo testified that at around 8:00 a.m. on March 30, 2003, while she was at her house located in Diamond Hills, Molave Extension, Payatas, Quezon City, Dela Cruz asked Salcedo for permission to go to Divisoria, but Dela Cruz had to pass by Cubao first because he would deliver a *banig* to a certain Nora.[13]

Supporting Salcedo's testimony, Nora related that at around 10:30 a.m. on March 30, 2003, while she was washing clothes at her house on Yale Street, Cubao, Quezon City, Dela Cruz arrived to bring the *banig* she ordered. Nora told Dela Cruz to wait until she had finished washing clothes. Dela Cruz then said he had to leave for a while because one of the trash cans he made got broken, and Nora replied that she would wait for him. When Dela Cruz returned, Nora was still washing clothes. Dela Cruz left Nora's house again to go to a nearby *sari-sari* store, located at the corner of Yale and Oxford Streets, and owned by one Mama Joy, so he could have his money broken to smaller denominations.[14] While Dela Cruz was standing in front of Mama Joy's store, three police officers arrived with two other people they had previously arrested. After entering Mama Joy's store, the police officers arrested Dela Cruz. When Nora went up to the police officers to ask why they were arresting Dela Cruz, the police officers told her "*daldal ka ng daldal, isasama ka namin*," which made her stop.[15] The police officers boarded Dela Cruz onto their vehicle and brought him to Cubao Police Station 7. Mama Joy was not arrested at that time, but during Dela Cruz's trial, Mama Joy was already detained at Camp Karingal also for *shabu*-related charges.

After trial, the RTC promulgated its Decision dated September 7, 2005 finding Dela Cruz guilty as charged.

The RTC gave credibility to the prosecution's version, considering the following inconsistencies in the defense's account: (1) Dela Cruz testified that he resides at No. 1 K.J. Kamias Road, Quezon City, which was just across a bridge from Yale Street. If this was true, then there was reason to believe that Dela Cruz had a

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[13] *Id.* at 2-5.

[14] "*[M]agpapapalit lang siya ng barya*" (TSN, May 24, 2004, p. 5).

[15] TSN, May 24, 2004, p. 7.

sense of community hygiene to put up and maintain trash cans at the *eskinita* between Yale and Oxford Streets. But from Salcedo's testimony, it appears that Dela Cruz and his two children with his first wife lived with Salcedo at Diamond Hills, Molave Ext., Payatas B, Quezon City, several kilometers away from the *eskinita* between Yale and Oxford Streets in Cubao, Quezon City. Salcedo's residence is so distant from Cubao that in the absence of association with any community organization in the latter area, it was incongruous to believe that Dela Cruz would entertain any notion of public service therein; (2) the story of Dela Cruz is radically different from that of his own witnesses, Salcedo and Nora. Dela Cruz repeatedly declared that he was at the *eskinita* between Yale and Oxford Streets to take a look at the trash cans he placed thereat, and never mentioned that he was to deliver a *banig* to Nora in Cubao, or that he went to Mama Joy's store while waiting for Nora to finish her laundry; and (3) if Dela Cruz's main interest was the cleanliness of the *eskinita* between Yale and Oxford Streets, rather than selling *shabu*, then the community leaders in the said area, or at the very least, his own *kumpare* who supposedly live there, would have come to court to defend him, but no one did.

The dispositive portion of the RTC decision reads:

> ACCORDINGLY, judgment is rendered finding the accused REYNALD DELA CRUZ *y* Libantocia GUILTY beyond reasonable doubt of violation of Section 5 of R.A. 9165 (for drug sale) as charged, and he is hereby sentenced to spend time in jail by way of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00.
>
> The *shabu* involved here is ordered transmitted to the PDEA thru DDB for proper disposition.[16]

Dela Cruz appealed to the Court of Appeals, which, in a Decision dated January 22, 2007, affirmed the findings and conclusion of the RTC.

The Court of Appeals cited the presumption of regularity in the police officers' performance of their official duties:

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[16] Records. pp. 18-19.

At the outset, it bears pointing out that prosecutions of cases for violation of the Dangerous Drugs Act arising from buy-bust operations largely depend on the credibility of the police officers who conducted the same. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit. And so must the prosecution witness-member of the buy-bust team in the case at bar be accorded full credence in the absence of any improper motive to implicate [Dela Cruz].

Furthermore, the presumption of regularity in the performance of official duties has not been controverted by [Dela Cruz]; hence, this Court is bound to uphold it. He utterly failed to prove that in testifying against him, the prosecution witnesses were motivated by reasons other than the duty to curb the possession of prohibited drugs. There is no proof of any ill motive or odious intent on the part of the police authorities to impute falsely such a serious crime to [Dela Cruz]. Thus, the Court will not allow the former's testimonies to be overcome by self-serving defenses.

Well-settled is the rule that categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the appellants' defense of denial and alibi.[17]

The appellate court further held that the prosecution was able to establish all the essential elements of illegal sale of *shabu*:

While [Dela Cruz] asserts that the prosecution failed to fully substantiate the identity of the *corpus delicti* of the crime, we are, however, bound to uphold the findings of the trial court. Jurisprudence clearly sets the essential elements to be established in the prosecution of illegal sale of shabu as follows: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor.

What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

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[17] *Rollo*, p. 7.

In the case at bar, all these elements were proven. ***First***, there was meeting of the minds between the buyer and the seller. PO2 Ocampo, the poseur-buyer, was willing to buy *shabu* from [Dela Cruz]. ***Second***, there was consideration for the sale, the parties having agreed upon the amount of ₱200.00. ***Third***, [Dela Cruz] handed over to the poseur-buyer a plastic sachet containing *shabu*, the subject of the sale. The positive identification of [Dela Cruz] by poseur-buyer as the one who peddled the *shabu* clearly established the illicit sale, as the poseur-buyer is the best witness to the transaction.[18]

Agreeing with the inconsistencies in the defense's evidence, observed by the RTC, the Court of Appeals pronounced:

Moreover, from the viewpoint of this Court, the version of [Dela Cruz] is markedly unusual and strange. It just does not conform with our common knowledge and experience. It has been said time and again that evidence, to be worthy of credit, must not only proceed from the mouth of a credible witness but must be credible in itself. By this is meant that it should be natural, reasonable and probable in view of the circumstance which it describes or to which it relates, so as to make it easy for the mind to accepts (sic) as worthy of belief.

x x x x x x x x x

In cases involving violations of the Dangerous Drugs Law, appellate courts tend to heavily rely upon the trial court in assessing the credibility of witnesses, as it had the unique opportunity, denied to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination. Hence, its factual findings are accorded great respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied.[19]

In the end, the appellate court decreed:

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Quezon City, Branch 103 in Criminal Case No. Q-03-116311, finding accused-appellant Reynald dela Cruz *y* Libantocia guilty beyond reasonable doubt of violation of Article 5,

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[18] *Id.* at 8.

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

Article II of R.A. 9165, and sentencing him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), is affirmed *in toto*.[20]

After giving due course to Dela Cruz's Notice of Appeal in a Resolution dated February 14, 2007, the Court of Appeals forwarded the records of the case to this Court.

In a Resolution[21] dated June 27, 2007, the Court notified the parties that they may file their respective supplemental briefs, if they so desired, within 30 days from notice. Dela Cruz and the People[22] opted not to file their supplemental briefs on the ground that they had exhaustively argued all the relevant issues in their briefs, and the filing of a supplemental brief would only entail a repetition of the arguments already discussed therein.

In his Accused-Appellant's Brief,[23] Dela Cruz presents the following assignment of errors:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT 9165, DESPITE THE FACT THAT THE PROSECUTION FAILED TO ESTABLISH THE IDENTITY OF THE ILLEGAL DRUG OR *CORPUS DELICTI* OF THE OFFENSE.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

Dela Cruz asserts that the police officers failed to account for the chain of custody of the seized item alleged to be *shabu* and establish the identity of the illegal drug, the *corpus delicti* of the case.

We find no merit in the instant appeal.

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[20] *Rollo*, p. 11.

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

[22] *Id.* at 21-24 and 25-27.

[23] CA *rollo*, p. 33.

In a prosecution for illegal sale of regulated or prohibited drugs, conviction can be had if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.[24]

All the foregoing elements were established in this case by the following testimony of PO2 Ocampo:

FISCAL ARAULA
Q When your group was in Yale Street, what happened at the place?

WITNESS
A I saw a person very busy selling drugs.

FISCAL ARAULA
Q When you see this person very busy selling drugs, what did you do as a police officer?

WITNESS
A We positioned ourselves.

FISCAL ARAULA
Q What happened next?

WITNESS
A The informant and I approached the accused.

FISCAL ARAULA
Q Were you able to talk to the accused at the time?

WITNESS
A Yes, sir.

FISCAL ARAULA
Q If that person is inside the courtroom, can you point to him?

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[24] *People v. Mala*, 458 Phil. 180, 190 (2003).

WITNESS
A Yes sir, that man.

INTERPRETER
Witness pointed to a person inside the courtroom who identified himself as Reynald dela Cruz.

FISCAL ARAULA
Q You said you and the informant approached the accused at the time, what happened when you approached him?

x x x x x x x x x

WITNESS
A Our informant introduced me to the accused.

FISCAL ARAULA
Q What did your informant tell?

WITNESS
A He told to the accused that I am interested to buy *shabu*.

FISCAL ARAULA
Q What was the response of the accused?

WITNESS
A How much I will buy.

FISCAL ARAULA
Q And what is your answer?

WITNESS
A ₱200. and I gave him the ₱200 and in return he gave me the *shabu*.

FISCAL ARAULA
Q Can you describe the drug that was given to you at the time?

x x x x x x x x x

WITNESS
A Small plastic sachet.

FISCAL ARAULA
Q After giving that money to the accused and after receiving the drugs, what happened next?

WITNESS
A I examined the contents of the plastic sachet.

FISCAL ARAULA
Q And what is your conclusion?

WITNESS
A I made a pre-arranged signal.

FISCAL ARAULA
Q What is the pre-arranged signal?

WITNESS
A I tapped the shoulder of *lakay*.

FISCAL ARAULA
Q After you made the pre-arranged signal, what happened next?

WITNESS
A My companion approached us and we arrested the accused.

FISCAL ARAULA
Q Who arrested the accused?

WITNESS
A I, Sir.

FISCAL ARAULA
Q How about the drugs?

WITNESS
A To my companion.

FISCAL ARAULA
Q How about the ₱200?

WITNESS
A My possession, sir.

FISCAL ARAULA
Q You said you were in possession of ₱200 and the plastic sachet after the accused was arrested, where did you get the ₱200?

WITNESS
A On his right hand.

FISCAL ARAULA
Q After you confiscated the ₱200 and the *shabu*, what happened after that?

WITNESS
A We brought them to the station.

FISCAL ARAULA
Q How about the *shabu* you recovered, what happened to that?

WITNESS
A We brought to the PNP crime lab.

FISCAL ARAULA
Q What marking did you place?

WITNESS
A JO, sir.

FISCAL ARAULA
Q Do you have the ₱200?

WITNESS
A Yes, sir.

FISCAL ARAULA
May we request the defense counsel to make a comparison because we will be marking the photocopy attached to the record.

ATTY. CONCEPCION
Faithful reproduction.

FISCAL ARAULA
Q You said that you made the marking on the ₱200, where is the marking?

WITNESS
A Here, sir.

FISCAL ARAULA
May we request that the marking placed on ₱100 with serial number be marked as EXHIBIT J-2 and the other ₱100 as J-3.

Q You said you placed the marking on the plastic sachet, what was the marking?

WITNESS
A JO, sir.

FISCAL ARAULA
Q Showing to you this plastic sachet, what can you say to this?

WITNESS
A This is the one I bought from Reynald.

FISCAL ARAULA
This plastic sachet has already been marked as Exhibit E-1 to E-2, we request that the marking of the witness be marked as EXHIBIT E-3.[25]

During trial, PO2 Ocampo, who acted as the poseur-buyer, positively identified Dela Cruz as the seller of the *shabu*. PO2 Ocampo likewise identified the ₱200.00 buy-bust money he paid to Dela Cruz and the plastic sachet containing the *shabu* which Dela Cruz gave in exchange for the ₱200.00, both bearing the initials "JO," which PO2 Ocampo personally placed thereon in the course of the entrapment operation. Indubitably, there was a consummated illegal sale of a prohibited drug.

Dela Cruz questions before us the chain of custody of the *shabu* he sold to PO2 Ocampo during the buy-bust operation, so as to raise doubts on the identity of the drugs presented before the RTC during trial.

Section 21, paragraph 1 of Article II of Republic Act No. 9165 instructs the apprehending authorities on the proper procedure they should follow immediately after seizure and confiscation of dangerous drugs:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 expounds on the procedure, thus:

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[25] TSN, February 9, 2004, pp. 6-14.

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

In *People v. Naquita*,[26] we expressly declared that non-compliance with Section 21 of Republic Act No. 9165 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

Dela Cruz did not present any evidence at all to substantiate his allegation that the integrity and evidentiary value of the *shabu* presented as evidence at his trial had been compromised at some point. To the contrary, records show that there had been substantial compliance with the prescribed procedure.

The chain of custody was established through the following links: (1) PO2 Ocampo obtained one plastic sachet containing *shabu* from Dela Cruz during the buy-bust operation; (2) PO2 Ocampo marked the sachet with his initials "JO"; (3) A request for laboratory examination of "[o]ne (1) heat sealed transparent plastic sachet containing undetermined amount of suspected white crystalline substance marked 'JO'" was signed by Police

[26] G.R. No. 180511, July 28, 2008, 560 SCRA 430, 447-448.

Senior Inspector Maximo Milan Canilang, Chief of the Station Drug Enforcement Unit (SDEU), and PO3 Domingo, Investigator;[27] (4) The plastic sachet was submitted to Police Inspector Yelah C. Manaog (P/Insp. Manaog), Forensic Chemist of the PNP Crime Laboratory, who, upon receipt, marked the sachet with her initials "YCM";[28] (5) P/Insp. Manaog issued Chemistry Report No. D-333-03, stating that "[q]ualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for Methylamphetamine hydrochloride, a dangerous drug";[29] and (6) The plastic sachet was presented as Exhibit E, and the markings made thereon by PO2 Ocampo and P/Insp. Manaog as Exhibits E-1 and E-2, respectively. There is no doubt in our minds that the very same plastic sachet obtained from Dela Cruz during the buy-bust operation was the same specimen submitted for examination at the crime laboratory and presented as evidence during trial.

We note further that the defense raised its objection and questioned the integrity of the *shabu* allegedly seized from Dela Cruz only on appeal. Failure to raise this issue during trial is fatal to the case of the defense.[30] We explained in *People v. Sta. Maria*[31] that:

> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and

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[27] Records, p. 4.

[28] *Id.* at 27.

[29] *Id.* at 8.

[30] *People v. Desuyo*, G.R. No. 186466, July 26, 2010, 625 SCRA 590, 609.

[31] G.R. No. 171019, February 23, 2007, 516 SCRA 621.

evidentiary value. Objection to 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.[32]

The RTC and the Court of Appeals, in convicting Dela Cruz for the illegal sale of regulated or prohibited drugs, gave full faith and credence to the evidence presented by the prosecution.

In a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[33]

Not finding any arbitrariness or oversight on the part of the RTC and the Court of Appeals, we have no reason to set aside their factual findings.

It is equally settled that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[34] Dela Cruz utterly failed to prove that in testifying against him, PO2 Ocampo was motivated by reasons other than the duty to curb the sale of prohibited drugs. There is no proof of any ill motive or odious intent on the part of the police authorities to impute falsely such a serious crime to Dela Cruz.[35]

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[32] *Id.* at 633-634.

[33] *People v. Naquita*, *supra* note 26 at 444.

[34] *People v. Saludes*, 451 Phil. 719, 729 (2003).

[35] *People v. Razul*, 441 Phil. 62, 89-90 (2002).

Dela Cruz's denial of the charges and claim of frame-up are inherently weak defenses.

In drug cases, entrapment is a normal police technique to catch the culprit *in flagrante delicto.* On the other hand, denial and frame-up are the usual defenses set up by the accused. Affirmative statements are given greater weight than mere denials.[36]

We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can be easily concocted, hence, commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the police officers' alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. Bare denials cannot prevail over the positive identification by PO2 Ocampo of Dela Cruz as the person who sold him the *shabu*.[37]

Section 5, Article II of Republic Act No. 9165 stipulates that the illegal sale of prohibited or regulated drugs shall be penalized with life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Considering said provision, we sustain the RTC and the Court of Appeals in imposing upon Dela Cruz: (1) the penalty of life imprisonment, since there was no mitigating or aggravating circumstance attending Dela Cruz's violation of the law; and (2) the minimum amount of ₱500,000.00 fine, given that the *shabu* obtained from Dela Cruz in the buy-bust operation weighed only 0.20 grams.

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[36] *People v. Ganenas*, 417 Phil. 53, 66-67 (2001).

[37] *People v. Uy*, 392 Phil. 773, 788 (2000).

WHEREFORE, premises considered, the instant appeal is *DENIED*. The Decision dated January 22, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01579, which affirmed the Decision dated September 7, 2005 of the Regional Trial Court of Quezon City, Branch 103, in Criminal Case No. Q-03-116311, finding accused-appellant Reynald Dela Cruz *y* Libantocia guilty beyond reasonable doubt of selling 0.20 grams of methamphetamine hydrochloride or *shabu*, a prohibited drug, in violation of Section 5, Article II of Republic Act No. 9165, and imposing upon him the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00), is *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181355. March 30, 2011]

BENJAMIN BELTRAN, JR. and VIRGILIO BELTRAN, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; ENTRIES IN THE POLICE OR *BARANGAY* BLOTTER ARE NOT CONCLUSIVE PROOF OF THE TRUTH OF SUCH ENTRIES.— It is well-entrenched that **entries in a police or *barangay* blotter,** although regularly done in the course of the performance of official duty, are **not conclusive**

proof of the truth of such entries, for these are often incomplete and inaccurate. These, therefore, **should not be given undue significance or probative value as to the facts stated therein.**

2. CRIMINAL LAW; THEFT; ELEMENTS.— [T]he elements of the crime of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

3. ID.; ID.; ID.; *ANIMUS LUCRANDI* OR INTENT TO GAIN; CONSTRUED.— [T]his Court held that *animus lucrandi*, or **intent to gain, is an internal act which can be established through the overt acts of the offender.** Although proof as to motive for the crime is essential when the evidence of the theft is circumstantial, **the intent to gain or *animus lucrandi* is the usual motive to be presumed from all furtive taking of useful property appertaining to another,** unless special circumstances reveal a different intent on the part of the perpetrator. The intent to gain may be presumed from the proven unlawful taking.

4. ID.; ID.; ID.; ALTHOUGH THE BODY OF THE HAND TRACTOR WAS SUBSEQUENTLY RECOVERED AND ONLY THE ENGINE WAS TAKEN, IT DOES NOT NECESSARILY FOLLOW THAT THE CRIME COMMITTED WAS ONLY THEFT OF ENGINE; EXPLAINED.— Although the body of the hand tractor was subsequently recovered as stated in the Pre-Trial Order and only the engine was taken by the petitioners and Francisco Bravo, it does not necessarily follow that it was only theft of the engine of the hand tractor. In *People v. Obillo*, this Court held that: x x x That **only the wheel was found in possession of the accused** and was intended to be appropriated by the latter **is of no moment.** The **unlawful taking of the tricycle from the owner was already completed.** Besides, the **accused may be held liable for the unlawful taking of the whole vehicle even if only a part thereof is ultimately taken and/or appropriated while the rest of it is abandoned.** Also, in *People v. Carpio*, cited in *People v. Obillo*, this Court convicted

the accused Carpio of theft of a car which was found abandoned one day after it was stolen but without three (3) of its tires, holding thus: x x x The act of asportation in this case was undoubtedly committed with intent on the part of the thief to profit by the act, and **since he effectively deprived the true owner of the possession of the entire automobile, the offense of larceny comprised the whole car.** The fact that the accused stripped the car of its tires and abandoned the machine in a distant part of the city did not make the appellant any less liable for the larceny of that automobile. **The deprivation of the owner and the trespass upon his right of possession were complete as to the entire car;** and the fact that the thieves thought it wise promptly to abandon the machine in no wise limits their criminal responsibility to the particular parts of the car that were appropriated and subsequently used by the appellant upon his own car. In the same way, though only the engine of the hand tractor was taken by petitioners while the body thereof was abandoned, it does not in any way limit their criminal responsibility to that part of the hand tractor. It bears stressing that the unlawful taking of the whole hand tractor was already completed or consummated the moment the petitioners took it from the farmhouse of the private complainant and brought it to the farmhouse of petitioners' father and subjected the same to their control. Thus, **petitioners may be held liable for the theft of the entire hand tractor and not just of the engine thereof.**

5. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES WHICH CANNOT PREVAIL OVER POSITIVE AND CREDIBLE TESTIMONY.— As the Court has oft pronounced, both **denial and *alibi* are inherently weak defenses, which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.** For the defense of *alibi* to prosper at all, it must be proven by the accused that it was physically impossible for him to be at the scene of the crime or its vicinity at the time of its commission.

6. CRIMINAL LAW; CIVIL LIABILITY; DAMAGES; AWARD OF ACTUAL DAMAGES, JUSTIFIED.— The law does not require a definite degree of certainty when proving the amount

of damages claimed. It is necessary, however, to establish evidence to substantiate the claim. To justify an award for actual damages, there must be competent proof of the actual amount of loss. **Credence can be given only to claims which are duly supported by receipts.**

7. CRIMINAL LAW; THEFT; IMPOSABLE PENALTY.— For the crime of theft, the penalty shall be based on the value of the thing stolen. x x x This Court has previously discussed that petitioners are liable for the theft of the entire hand tractor, though its body was subsequently recovered and only the engine was taken or carried away, because the unlawful taking of the whole hand tractor was already completed or consummated the moment the petitioners took it from the farmhouse of the private complainant and brought it to the farmhouse of their father and subjected the same to their control. However, since the value of the lost engine was not properly proven by the prosecution, its value therefor cannot be considered in determining the penalty to be imposed upon the petitioners. Only the value of the body of the hand tractor, which is ₱17,000.00, as evidenced by Official Receipt No. 313, can be considered in determining the imposable penalty upon petitioners. Under Article 309 of the Revised Penal Code, the penalty for theft when the value of the stolen property is more than ₱12,000.00 but does not exceed ₱22,000.00 is x x x ***prision mayor* in its minimum and medium periods.** x x x Applying the Indeterminate Sentence Law, **the minimum of the indeterminate penalty shall be anywhere within the range of the penalty next lower in degree to that prescribed for the offense,** without first considering any modifying circumstance attendant to the commission of the crime. Since the **penalty prescribed by law is *prision mayor* in its minimum and medium periods, the penalty next lower would be *prision correccional* in its medium and maximum periods.** Thus, the minimum of the indeterminate sentence shall be anywhere within 2 years, 4 months and 1 day to 6 years. The maximum of the indeterminate penalty is that which, taking into consideration the attending circumstances, could be properly imposed under the Revised Penal Code. There being no mitigating or aggravating circumstance and the value of the thing stolen does not exceed ₱22,000.00, the maximum term of the indeterminate penalty, which is *prision mayor* in its

minimum and medium periods, should be imposed in the medium period or 7 years, 4 months and 1 day to 8 years and 8 months. Accordingly, petitioners should be meted out an indeterminate penalty of 3 years, 6 months and 20 days of *prision correccional* as minimum, to 8 years and 8 months of *prision mayor* as maximum.

APPEARANCES OF COUNSEL

Jovit S. Ponon for petitioners.
The Solicitor General for respondents.

D E C I S I O N

PEREZ, ***J.*:**

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure is the Decision[1] dated 23 March 2007 of the Court of Appeals in CA-G.R. CR No. 24212, affirming with modification the Decision[2] dated 23 February 2000 of the Regional Trial Court (RTC) of Camarines Sur, 5th Judicial Region, Branch 31, in Criminal Case No. P-2681, finding herein petitioners Benjamin Beltran, Jr. and Virgilio Beltran, guilty beyond reasonable doubt of the crime of theft. Petitioners likewise questioned the Court of Appeals Resolution[3] dated 16 January 2008 denying for lack of merit their Motion for Reconsideration of the assailed Decision.

Petitioners Benjamin Beltran, Jr. and Virgilio Beltran, together with a certain Francisco Bravo, were charged with the crime of theft in an Information[4] that reads:

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[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring. *Rollo*, pp. 29-40.

[2] Penned by Presiding Judge Martin P. Badong, Jr. CA *rollo*, pp. 31-38.

[3] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring. *Rollo*, p. 27.

[4] CA *rollo*, p. 30.

That on or about the 20th day of January 1998 at Barangay Sta. Elena, Municipality of Bula, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, [herein petitioners and a certain Francisco Bravo], **with intent to gain, but without violence against or intimidation of persons nor force upon things**, did, then and there willfully, unlawfully and feloniously **take, steal and carry away the hand tractor belonging to one Vicente Ollanes, valued at ₱29,000.00** Pesos, Philippine Currency, to the damage and prejudice of the said owner in the aforesaid amount.[5] [Emphasis supplied].

Petitioners were arrested but their co-accused Francisco Bravo remains at large. Upon arraignment, petitioners, assisted by counsel *de oficio*, pleaded NOT GUILTY[6] to the charge.

During pre-trial, the following stipulation of facts were offered and admitted by the parties: (1) the identity of the private complainant, Vicente Ollanes, and the petitioners; and (2) that on 11 February 1998 a one unit hand tractor was found by *Barangay* Captain Leon Alcala, Jr.[7]

Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: Vicente Ollanes (Vicente), private complainant; Rafael Ramos *y* Cabilen (Rafael), farm helper of Vicente; and Remberto Naldo (Remberto), one of the *barangay tanods* in Sta. Elena, Bula, Camarines Sur at the time the incident happened.

Vicente narrated that he has a farm in Sta. Elena, Bula, Camarines Sur. He knew petitioners for about three years already as the farm that they were plowing is merely adjacent to his farm. Vicente has two farmhouses on his farm, one of which is just near the farm of petitioners' father, Benjamin Beltran, Sr., while the other is located at the upper portion of his farm. In 1996, Vicente purchased a five horsepower Yanmar engine from Yanmar Marketing in Pili, Camarines Sur. The

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[5] *Id.*

[6] Per RTC Order dated 5 August 1998. Records, p. 56.

[7] As evidenced by Pre-Trial Order dated 7 October 1998. *Id.* at 62.

said engine was later on installed on his F-5 hand tractor that he acquired on 24 October 1997 from Reforsado Metal Works in Bagumbayan, Bula, Camarines Sur,[8] for ₱17,000.00.[9] The F-5 hand tractor powered by five horsepower Yanmar engine (hand tractor) valued at ₱29,000.00 is being used in Vicente's farm in Sta. Elena, Bula, Camarines Sur. The same was stored outside Vicente's farmhouse near petitioners' father's farm.[10]

On 20 January 1998 at about 6:30 p.m., more or less, Vicente arrived in Sta. Elena, Bula, Camarines Sur, from his house in La Paz, Pili, Camarines Sur. Upon seeing him, his cousin, Lorencita Nacario, immediately informed him that his hand tractor was stolen by three persons, namely: petitioners Benjamin Beltran, Jr. and Virgilio Beltran, together with a certain Francisco Bravo. The said incident happened at around 6:00 p.m. while Vicente was still in his house in La Paz, Pili, Camarines Sur. To verify such information, Vicente directly went to his farmhouse, together with a certain *Kagawad* Gomer Sierte, his farm helper Rafael and a certain Policarpio Tagle, Jr. Upon reaching his farmhouse, Vicente confirmed that his hand tractor was, indeed, missing. As a result, Vicente reported the same to the *barangay* and police authorities of Sta. Elena, Bula, Camarines Sur.[11]

Rafael, Vicente's farm helper who operates the aforesaid hand tractor, verified that on 20 January 1998 at around 6:00 p.m., while he was inside the farm hut[12] of Vicente in Sta. Elena, Bula, Camarines Sur, he suddenly saw that Vicente's hand tractor stored outside the latter's farm hut were being pulled by petitioners and another person, whose name he heard to be "Paquito." Petitioners and "Paquito" successfully brought the same to the farm hut of petitioners' father that is 50 meters

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[8] Testimony of Vicente Ollanes. TSN, 26 October 1998, pp. 5-9.

[9] As evidenced by Official Receipt No. 313. Records, p. 110.

[10] Testimony of Vicente Ollanes. TSN, 26 October 1998, pp. 9 and 12.

[11] *Id.* at 9-12.

[12] Its walls were made of bamboo slats. It sometimes referred to in this case as farmhouse, *nipa* house or *nipa* hut. (Testimony of Rafael Ramos *y* Cabilen. TSN, 25 November 1998, p. 17).

away from the farm hut of Vicente. Rafael failed to approach and prevent them from doing so because petitioners were armed with *bolos*. Rafael, thereafter, proceeded to inform Vicente that his hand tractor was no longer in his farm hut. He then accompanied Vicente in going to the farm hut where the hand tractor was lost.[13]

Rafael further stated that the five horsepower Yanmar engine installed on Vicente's F-5 hand tractor has a value of ₱12,000.00.[14]

Remberto corroborated Rafael's testimony and revealed that at about the same date and time, he, together with his brothers, was at the nearby *nipa* house of a certain Silvestre Bigay, Jr. (Silvestre) in Sta. Elena, Bula, Camarines Sur, which is about 30 meters away from the farmhouse of Vicente and 60 meters away from the farmhouse of petitioners' father, for the repair of Silvestre's irrigation pump. After the repair thereof, Remberto's brothers went home but Remberto stayed to test and observe the irrigation pump. At this juncture, Remberto saw petitioners and "Paquito," whose full name was later known to be Francisco Bravo (Francisco), in the *nipa* house of Vicente pulling the latter's hand tractor towards the *nipa* hut of petitioners' father. Thereafter, petitioners and Francisco removed the hand tractor's engine and left the body outside the *nipa* hut of their father. Remberto was certain that the hand tractor taken by petitioners and Francisco belongs to Vicente as he used the same when he installed the former's irrigation pump.[15]

The defense, on the other hand, presented the following witnesses: petitioners Benjamin Beltran, Jr. (Benjamin, Jr.) and Virgilio Beltran (Virgilio); Lolita Morada Beltran (Lolita), mother of petitioners; and *Barangay* Captain Leon Alcala, Jr. (*Barangay* Captain Alcala) of Sta. Elena, Bula, Camarines Sur.

Petitioner Benjamin, Jr. denied the accusation against him. He also denied having known a certain Francisco Bravo, their

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[13] *Id.* at 3-10.

[14] *Id.* at 14.

[15] Testimony of Remberto Naldo. TSN, 20 January 1999, pp. 7-16.

co-accused in this case. He claimed that on 20 January 1998, he was in Angustia, Nabua, Camarines Sur, working as a construction worker at the house of Ignacio Baldago from 7:00 a.m. until 4:00 p.m. or 5:00 p.m. in the afternoon. Moreover, on the said date, he never went to Sta. Elena, Bula, Camarines Sur, where his parents have farm lots and a *nipa* hut constructed by his brother-in-law. He also stated that the distance between Angustia, Nabua, Camarines Sur and Sta. Elena, Bula, Camarines Sur, is quite far and he needs to take three rides from Angustia to Sta. Elena.[16]

Petitioner Benjamin, Jr. admitted, however, that he personally knew Vicente since 1990 because the latter previously requested his parents to allow him to cultivate his parents' farm lot in Sta. Elena, Bula, Camarines Sur, but his parents denied such request. He also affirmed that he and Vicente had no misunderstanding whatsoever but his parents and Vicente had.[17]

Like his brother, petitioner Virgilio denied the accusation against him and claimed that on 20 January 1998, he was at Garchitorena, Camarines Sur, as he was one of the laborers hired by a certain *Manoy* Rudy Bona to cement the floor of the basketball court near the municipal building of Garchitorena, Camarines Sur. He maintained that he went there in November 1997 and returned home only in February 1998. It took him half a day to go back to Sta. Elena, Bula, Camarines Sur, from Garchitorena, Camarines Sur. Petitioner Virgilio also admitted that he knew Vicente way back in 1997. He also stated that the possible reason why he was implicated in the crime of theft was the misunderstanding that happened between his father and Vicente regarding the land in Sta. Elena, Bula, Camarines Sur, wherein his father stopped Vicente from working thereat.[18]

In support of petitioners, their mother, Lolita, testified that on 20 January 1998, she was in their farm hut in Sta. Elena,

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[16] Testimony of Benjamin Beltran, Jr. TSN, 17 March 1999, pp. 4-10, 13, 15, 26 and 36.

[17] *Id.* at 12-13 and 32-33.

[18] Testimony of Virgilio Beltran. TSN, 14 June 1999, pp. 4-9.

Bula, Camarines Sur. She maintained that on the said date, her two sons, petitioners Benjamin, Jr. and Virgilio, never went to their farm hut because they have their own work. Petitioner Benjamin, Jr. was working in Angustia, Nabua, Camarines Sur, while Petitioner Virgilio was working in Pili, Camarines Sur. She, thus, vehemently denied the allegations against her sons.[19]

Lolita further declared that she came to know Vicente in 1990 when the latter came over to their hut to ask permission that he be allowed to work in their farm which her husband refused. On 29 December 1997, however, when she and her husband arrived in their farm in Sta. Elena, Bula, Camarines Sur, they found somebody, together with Vicente, plowing their farm. Her husband, thus, stopped them from doing so to which they acceded. Allegedly, in retaliation thereof, Vicente reported to the police authorities in Bula, Camarines Sur, that she and her family are members of the New People's Army and that they were armed. Accordingly, the Philippine National Police (PNP) of Baao, Camarines Sur, conducted a raid against them while they were at the house of a certain *Kagawad* Julian Botor of Sta. Elena, Bula, Camarines Sur. Lolita and her husband caused the said incident to be blottered at PNP Bula, Camarines Sur.[20]

Lolita further claimed that she has no idea that the hand tractor of Vicente was missing until his two sons were arrested linking them to the lost thereof. She also confirmed that there was no property dispute between them and Vicente even prior to or after 20 January 1998.[21]

Barangay Captain Alcala testified that he, indeed, issued a Certification[22] to Lolita dated 11 February 1998 and he stated therein that Lolita and company left their *camalig* on 4 February 1998 and brought with them personal belongings. He testified

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[19] Testimony of Lolita Morada Beltran. TSN, 6 April 1999, pp. 7-8.

[20] *Id.* at 7-12.

[21] *Id.* at 14, 26 and 30.

[22] Records, p. 34.

further that on 4 February 1998, Lolita personally requested him to look after their belongings left in Sta. Elena, Bula, Camarines Sur, as they were about to go home in Angustia, Nabua, Camarines Sur. Thereafter, *Barangay* Captain Alcala and a certain *Barangay Tanod* Tranquelo instantly proceeded to the *nipa* house of Lolita and his family. They found thereat a landmaster hand tractor without engine, which according to Lolita, is owned by Vicente. Allegedly, *Barangay* Captain Alcala was requested by Lolita to inform Vicente to just get the said hand tractor in their *nipa* house. *Barangay* Captain Alcala likewise found in the nearby *nipa* hut of Vicente a Yanmar engine installed on the latter's irrigation pump.[23]

Once again, on 11 February 1998, *Barangay* Captain Alcala, together with Lolita, visited the area and purportedly found out that the Yanmar engine of Vicente was already missing.[24]

On rebuttal, the prosecution presented Ernesto Barcinas (Ernesto), relative of the petitioners. Vicente, the private complainant, was also presented as rebuttal witness.

Ernesto testified that on the whole day of 20 January 1998, he was by the side of Lake Bula, Camarines Sur, farming his land when he saw the petitioners at the farm of Vicente planting watermelon. At that time, he was just 10 meters away from the petitioners that is why he identified them clearly. Moreover, the petitioners are first cousins of his wife, Lydia Beltran. Ernesto maintained that on the same date, petitioners slept at their father's *nipa* hut in Sta. Elena, Bula, Camarines Sur.[25]

Vicente, on rebuttal, admitted that he knew *Barangay* Captain Alcala. **He also emphasized that he has three Yanmar engines and the engine that was stolen, together with his hand tractor, was his five horsepower Yanmar engine mounted thereon**. It was different from the Yanmar engine fixed on his irrigation

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[23] Testimony of *Barangay* Captain Leon Alcala, Jr. TSN, 21 June 1999, pp. 2-8.

[24] *Id.* at 9.

[25] Testimony of Ernesto Barcinas. TSN, 1 October 1999, pp. 4-8 and 10.

pump found by *Barangay* Captain Alcala. And, contrary to *Barangay* Captain Alcala's testimony, such Yanmar engine installed on his irrigation pump is not missing. Vicente also confirmed that he and the Beltran's have no misunderstanding. There was also no truth to the allegation of Lolita that he requested them to allow him to till a portion of their farm, for in reality, he has a bigger land to cultivate than them. Vicente similarly claimed that there was an error in the entry in the *barangay* blotter as the engine stated therein that was lost was his NT-65 Yanmar engine but what was actually lost was his F-5 hand tractor with five horsepower Yanmar engine installed thereon.[26]

On sur-rebuttal, the defense presented Benjamin Beltran, Sr. (Benjamin, Sr.), father of petitioners, who testified that his family had a conflict with the family of Ernesto as the latter, together with Vicente, had caused them to be raided by the police authorities while they were at the house of a certain *Kagawad* Julian Botor in Sta. Elena, Bula, Camarines Sur. He also disclosed that he has a land dispute with Vicente and it started when he caught the former clearing his farm in Sta. Elena, Bula, Camarines Sur. But he admitted that no case was filed in relation thereto. He also denied the accusation against his sons.[27]

Finding petitioners' defense of denial and *alibi* unmeritorious *vis-à-vis* the testimonies of witnesses for the prosecution, particularly their positive identification of the petitioners as the perpetrators of the crime, the court *a quo* rendered a Decision dated 23 February 2000, disposing as follows:

WHEREFORE, in view of all the forgoing, judgment is hereby rendered **finding the herein [petitioners] BENJAMIN BELTRAN, JR. and VIRGILIO BELTRAN, guilty beyond reasonable doubt of the offense of THEFT** and imposing upon them an indeterminate penalty of imprisonment of *arresto mayor* in its maximum period

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[26] Testimony of Vicente Ollanes. TSN, 21 October 1999, pp. 4-16.

[27] Testimony of Benjamin Beltran, Sr. TSN, 11 November 1999, pp. 4-9 and 24-25.

or four months and one day as the minimum penalty to *prision correccional* in its minimum period as the maximum penalty or two years and four months and to pay the costs hereof.

As civil liability, said [petitioners] are ordered to pay the private complainant jointly and severally, the sum of TWELVE THOUSAND (₱12,000.00) PESOS, the value of the engine lost, without however subsidiary imprisonment in case of insolvency.

Finally, let the records hereof be consigned to the archives until the third accused Francisco Bravo is arrested. Let *alias* warrant of arrest be issued for his arrest.[28] [Emphasis supplied].

Disgruntled, petitioners appealed the aforesaid trial court's Decision to the Court of Appeals *via* Notice of Appeal.[29]

Petitioners argued before the appellate court that the trial court erred in: (1) convicting them of the crime charged; (2) finding that the prosecution was able to establish their guilt beyond reasonable doubt; and (3) finding them civilly liable.

On 23 March 2007, the Court of Appeals rendered a Decision affirming petitioners' conviction but modifying the penalty imposed by the trial court, the decretal portion of which states:

WHEREFORE, the appealed [D]ecision of the Regional Trial Court of Camarines Sur (Branch 51) is **AFFIRMED** with **MODIFICATION** on the penalty imposed on [petitioners] in that they are sentenced to suffer the **indeterminate penalty of three (3) years of *prision correccional*, as minimum, to eleven (11) year[s] of *prision mayor*, as maximum**.[30] [Emphasis supplied].

In its Decision, the appellate court found Vicente's testimony credible as he was able to prove that his hand tractor was, indeed, stolen by petitioners, which testimony was not successfully refuted by the latter. Moreover, the defense of denial and *alibi* offered by petitioners necessarily failed in light of their positive identification as the real culprits. The

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[28] Records, p. 219.

[29] CA *rollo*, p. 39.

[30] *Rollo*, pp. 39-40.

appellate court similarly found the award of civil liability in favor of Vicente proper since the prosecution was able to prove that he truly sustained actual damages and that the same was caused by the felonious acts of petitioners.

Petitioners filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution[31] dated 16 January 2008.

Petitioners now seek relief from this Court *via* this Petition for Review on *Certiorari*, contending that the appellate court erred as follows:

I.

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT AFFIRMED THE DECISION OF THE REGIONAL TRIAL COURT CONVICTING THE PETITIONER[S] OF THE CRIME CHARGED DESPITE MATERIAL INCONSISTENCIES IN THE TESTIMONY OF PROSECUTION WITNESSES AND FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE [PETITIONERS] BEYOND REASONABLE DOUBT.

II.

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING THE PETITIONER[S] CIVILLY LIABLE SINCE THERE IS NO COMPETENT PROOF OR BEST EVIDENCE TO SHOW THE VALUE OF THE ENGINE LOST.

III.

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT IMPOSED A HIGHER PENALTY UPON THE PETITIONERS.[32]

Petitioners argue that the evidence of the prosecution miserably failed to establish the first element of the crime of theft, *i.e.*, taking of personal property. The private complainant himself was not certain as to what personal property was stolen

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[31] *Id.* at 27.

[32] *Id.* at 14.

from him as there was disparity between what was entered in the *barangay* blotter and in his testimony in open court. In the *barangay* blotter, it was stated that his two engines, one F-6 Yanmar hand tractor and NT-65 attached to the irrigation pump were stolen. However, in his testimony before the trial court, private complainant declared that what was stolen was his F-5 hand tractor not an F-6 hand tractor. Petitioners believe that such inconsistencies are material and substantial for the determination of whether the crime of theft was, indeed, perpetuated by them as it involved the very element of the crime itself. As such, petitioners assert that the appellate court committed a palpable mistake in affirming their conviction despite prosecution's failure to prove their guilt beyond reasonable doubt and to overcome their constitutionally enshrined right to be presumed innocent.

In the same way, petitioners maintain that the appellate court erred in finding them civilly liable for the value of the stolen engine since the prosecution failed to produce the receipt therefor. Such failure is fatal because the competent proof or the best evidence to show the value of the stolen engine is the receipt itself. Thus, the award of actual damages in favor of the private complainant has no basis.

As a final argument, petitioners faulted the appellate court in imposing upon them a higher penalty considering that the prosecution did not satisfactorily establish the value of the stolen property that would be the basis of the penalty to be imposed.

This Court affirms petitioners' conviction for theft.

Article 308 of the Revised Penal Code provides:

> ART. 308. *Who are liable for theft.* – Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

From the afore-quoted provision, it is clear that the elements of the crime of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be

accomplished without the use of violence against or intimidation of persons or force upon things.[33]

In this case, petitioners assailed that the first element of the crime of theft, *i.e.*, that there be taking of personal property, was not substantially proven by the prosecution because of the inconsistencies in the private complainant's testimony and the contents of the *barangay* blotter as to what personal property was actually taken. This Court holds otherwise.

Primarily, it is worth noting that petitioners merely questioned what particular personal property was taken but not the fact of taking itself.

It is well-entrenched that **entries in a police or *barangay* blotter**, although regularly done in the course of the performance of official duty, are **not conclusive proof of the truth of such entries, for these are often incomplete and inaccurate**. These, therefore, **should not be given undue significance or probative value as to the facts stated therein**.[34]

In the *barangay* blotter,[35] it is true that the stolen properties stated therein were an F-6 hand tractor and NT-65 Yanmar engine while in private complainant's open court testimony, the stolen property testified to was an F-5 hand tractor valued at ₱29,000.00. Nevertheless, such inconsistency has been satisfactorily explained by the private complainant during his testimony before the court *a quo*. He clarified that an error was committed by the *barangay* secretary in the entry made in the *barangay* blotter. Instead of an F-5 hand tractor, the *barangay* secretary entered therein an F-6 hand tractor and NT-65 Yanmar engine as the properties stolen by petitioners and Francisco Bravo. He called the attention of the *barangay* secretary and told the latter that it was his F-5 hand tractor that has been stolen by the petitioners and Francisco Bravo. But the *barangay* secretary merely assured him that the error will be rectified. As

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[33] *People v. Sison*, 379 Phil. 363, 384 (2000).

[34] *People v. Sandig*, 454 Phil. 801, 812-813 (2003).

[35] Records, p. 171.

such, he immediately proceeded to the police station to also report the incident.[36]

Moreover, as the Court of Appeals stated in its Decision, the petitioners never refuted the explanation given by the private complainant regarding the error in the entry in the *barangay* blotter.[37]

Similarly, a perusal of the Certification[38] issued by the PNP-Bula, Camarines Sur, as regards Police Blotter Entry No. 3023 dated 20 January 1998, as well as the affidavit of the private complainant and his testimony during preliminary investigation, readily reveals that the entry in the *barangay* blotter was, indeed, erroneous. All the entries in the afore-mentioned documents were consistent that the property stolen by petitioners and Francisco Bravo was private complainant's F-5 hand tractor valued at ₱29,000.00, not an F-6 hand tractor or NT-65 Yanmar engine.

Emphasis must also be given to the fact that during private complainant's entire testimony before the trial court, he remained consistent that what has been stolen by the petitioners and Francisco Bravo was his F-5 hand tractor valued at ₱29,000.00. More so, even the other prosecution witnesses never wavered in their testimony that it was private complainant's F-5 hand tractor that has been stolen by the petitioners and Francisco Bravo.

Further, prosecution witness Rafael positively identified petitioners as the persons who took the hand tractor of private complainant while it was parked outside the latter's farmhouse, which is just near petitioners' father's farm. He also identified with certainty the hand tractor being pulled by petitioners. As discussed by the trial court in its Decision, thus:

x x x [Rafael's] location therefore gave him a close view of the events that transpired near the hut. From his vantage point, he could

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[36] Testimony of Vicente Ollanes. TSN, 21 October 1999, pp. 12-15.

[37] *Rollo*, p. 36.

[38] Records, p. 112.

easily identify the persons pulling the hand tractor. During his testimony, he positively identified [petitioners] recognizing them immediately as they were his neighbors. x x x.

Equally important, [Rafael] also positively identified the hand tractor being pulled by [petitioners and a certain Paquito, whose full name was later on revealed to be Francisco Bravo] as the one owned by [private complainant]. **Being the one who operated the machine, he is the most competent person to identify it, more so at a short distance**. x x x.[39] [Emphasis supplied].

Another prosecution witness, Remberto, corroborated Rafael's testimony that he similarly saw petitioners and "Paquito," whose full name was later known to be Francisco Bravo, in the farmhouse of the private complainant, which is just 30 meters away from where he was and no trees whatsoever blocking his view, pulling private complainant's hand tractor towards the *nipa* hut of petitioners' father, which is just 60 meters away from where he was. Remberto, thereafter, observed petitioners and Francisco Bravo removed the hand tractor's engine and left the body outside the *nipa* hut of their father. Remberto was likewise certain that the hand tractor taken by petitioners and Francisco Bravo belongs to private complainant as he used the same when he installed the former's irrigation pump.[40]

Given the foregoing, there can be no doubt that the prosecution was able to prove the first element of the crime of theft. The same is true with the second element of theft, *i.e.*, that said property belongs to another. The prosecution witnesses have proven that the hand tractor belongs to private complainant, which petitioners never refuted.

As regards the third element of theft, *i.e.*, that the taking is done with intent to gain, this Court held that *animus lucrandi*, or **intent to gain, is an internal act which can be established through the overt acts of the offender**. Although proof as to motive for the crime is essential when the evidence of the theft is circumstantial, **the intent to gain or *animus lucrandi* is the**

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[39] *Id.* at 216.

[40] Testimony of Remberto Naldo. TSN, 20 January 1999, pp. 7-16.

usual motive to be presumed from all furtive taking of useful property appertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator. The intent to gain may be presumed from the proven unlawful taking.[41] In this case, it cannot be doubted that a hand tractor is a useful farming equipment and has monetary value. From the petitioners' act of taking the same unlawfully, their intent to gain can be reasonably presumed therefrom.

As to the fourth and fifth elements of theft, *i.e.*, that the taking be done without the consent of the owner and that the taking be accomplished without the use of violence against or intimidation of persons or force upon things, respectively, the same were also clearly established in this case. That the hand tractor of the private complainant was taken by the petitioners without the former's consent was clearly shown by the fact that the petitioners took the same when the private complainant was not in his farmhouse. The taking of the hand tractor was also accomplished without the use of violence against or intimidation of persons or force upon things as the petitioners did not destroy anything or threatened anyone in taking the hand tractor of the private complainant. Petitioners simply pulled the hand tractor until they reached their father's farmhouse and subjected the same to their complete control.

Thus, all the elements of theft were duly proven by the prosecution. As such, it is beyond any cavil of doubt that petitioners' guilt for the said crime has been proven beyond reasonable doubt.

Although the body of the hand tractor was subsequently recovered as stated in the Pre-Trial Order and only the engine was taken by the petitioners and Francisco Bravo, it does not necessarily follow that it was only theft of the engine of the hand tractor.

In *People v. Obillo*,[42] this Court held that:

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[41] *People v. Del Rosario*, 411 Phil. 676, 686 (2001).

[42] 411 Phil. 139 (2001).

x x x That **only the wheel was found in possession of the accused** and was intended to be appropriated by the latter **is of no moment**. The **unlawful taking of the tricycle from the owner was already completed**. Besides, the **accused may be held liable for the unlawful taking of the whole vehicle even if only a part thereof is ultimately taken and/or appropriated while the rest of it is abandoned**.[43] [Emphasis supplied].

Also, in *People v. Carpio*,[44] cited in *People v. Obillo*,[45] this Court convicted the accused Carpio of theft of a car which was found abandoned one day after it was stolen but without three (3) of its tires, holding thus:

x x x The act of asportation in this case was undoubtedly committed with intent on the part of the thief to profit by the act, and **since he effectively deprived the true owner of the possession of the entire automobile, the offense of larceny comprised the whole car**. The fact that the accused stripped the car of its tires and abandoned the machine in a distant part of the city did not make the appellant any less liable for the larceny of that automobile. **The deprivation of the owner and the trespass upon his right of possession were complete as to the entire car**; and the fact that the thieves thought it wise promptly to abandon the machine in no wise limits their criminal responsibility to the particular parts of the car that were appropriated and subsequently used by the appellant upon his own car.[46] [Emphasis supplied].

In the same way, though only the engine of the hand tractor was taken by petitioners while the body thereof was abandoned, it does not in any way limit their criminal responsibility to that part of the hand tractor. It bears stressing that the unlawful taking of the whole hand tractor was already completed or consummated the moment the petitioners took it from the farmhouse of the private complainant and brought it to the farmhouse of petitioners' father and subjected the same to their

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[43] *Id.* at 151-152.

[44] 54 Phil. 48 (1929).

[45] *Supra* note 42.

[46] *Id.* at 152.

control. Thus, **petitioners may be held liable for the theft of the entire hand tractor and not just of the engine thereof**.

In contrast to the prosecution's evidence, all that the defense can offer is the denial and *alibi* of the petitioners. As the Court has oft pronounced, both **denial and *alibi* are inherently weak defenses**, **which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime**.[47] For the defense of *alibi* to prosper at all, it must be proven by the accused that it was physically impossible for him to be at the scene of the crime or its vicinity at the time of its commission.[48] Unfortunately, petitioners failed to discharge this burden. As aptly elucidated by the court *a quo*:

> Even assuming that [petitioner Benjamin, Jr.], indeed worked in the house of Ignacio Baldago in Angustia, Nabua, Camarines Sur on [20 January 1998], **his admission that he left work at around 4 p.m. of that day and went home thereafter, opens his *alibi* to question**. Without the benefit of any corroborating witness who could prove he did went home after work and never left his house thereafter leaves one wondering what he did during the two hours from 4 p.m. to 6 p.m. **This two-hour period is more than enough for [petitioner Benjamin, Jr.] to go to Sta. Elena, Bula, Camarines Sur. Bula and Nabua are adjacent towns which can even be negotiated for less than 2 hours**, **and which therefore raises the possibility that [petitioner Benjamin] could have been in Sta. Elena, Bula, at around 6 p.m. of that day even if he indeed worked in the house of Ignacio Baldago**.
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> x x x x x x x x x
>
> The *alibi* of [petitioner Virgilio] that he was in Garchitorena, Camarines Sur on [20 January 1998], suffers from the same weakness as the alibi of his brother [petitioner Benjamin]. [Petitioner Virgilio] presented as proof a certification that he was employed by Jarbon Builders from [15 March 1997] to [5 March 1998] ostensibly in a project in Garchitorena, Camarines Sur. **But the certification can be relied upon only in proving his employment during the stated period but never his continued and uninterrupted presence in**

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[47] *People v. Veloso*, 386 Phil. 815, 825 (2000).

[48] *People v. Francisco*, 373 Phil. 733, 744 (1999).

Garchitorena, Camarines Sur. One could be employed in one place, but from time to time, be in another place, such as his home or the head office of his employer, in the course of his employment. x x x The certification aside from its hearsay character is therefore worthless to prove where he was at any given time.[49] [Emphasis supplied].

On the other hand, this Court finds merit in petitioners' contention that the appellate court erred in affirming the award of actual damages, representing the value of the stolen engine, in favor of the private complainant as the same has no legal basis.

Article 2199 of the Civil Code provides:

> Except as provided by law or by stipulation, one is entitled to an adequate compensation **only for such pecuniary loss suffered by him as he has duly proved**. Such compensation is referred to as actual or compensatory damages.

The law does not require a definite degree of certainty when proving the amount of damages claimed. It is necessary, however, to establish evidence to substantiate the claim. To justify an award for actual damages, there must be competent proof of the actual amount of loss. **Credence can be given only to claims which are duly supported by receipts**.[50]

While petitioners did not rebut the amount of ₱12,000.00 as the value of the engine lost, no receipt to prove such claim has been adduced in evidence by the prosecution. In the testimony of the private complainant, he merely stated when and where he bought the said engine but as regards its amount he did not mention anything about it as the receipt therefor could no longer be located. Instead, the private complainant merely stated that the whole hand tractor has a total amount of ₱29,000.00. He then presented the receipt for the body of the hand tractor with a stated amount of ₱17,000.00. Similarly, the testimony of Rafael,

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[49] Records, pp. 217-218.

[50] *Gamboa, Rodriguez, River & Co., Inc. v. Court of Appeals*, G.R. No. 117456, 6 May 2005, 458 SCRA 68, 74.

farm helper of the private complainant, that the engine was bought for ₱12,000.00 could not be given any considerable weight as it was not proven that he was with the private complainant when the latter bought the same. Rafael himself could not also produce any documentary evidence to support such claim. Even the lower courts failed to state any basis for granting the amount of ₱12,000.00 as actual damages in favor of the private complainant other than the bare testimonies of the latter and Rafael. Thus, the award of ₱12,000.00 as actual damages in favor of the private complainant is improper for lack of any legal basis.

As regards the amount of the body of the hand tractor, though it was properly supported by receipt, no actual damages can be awarded covering the value of the same since it was duly recovered as stipulated by the parties during pre-trial, which was clearly stated in the Pre-Trial Order.

There is also merit on the final argument of the petitioners that the appellate court erred in imposing upon them a higher penalty.

For the crime of theft, the penalty shall be based on the value of the thing stolen.[51] In *People v. Concepcion*,[52] this Court held that:

x x x **The penalty for theft is graduated according to the value of the thing/s stolen. The value of the articles stolen should be used as basis for the imposable penalty although** the electric guitar, wall clock, traveling bag and CD component were **recovered. The recovery of the stolen property does not mean that the crime of theft was not consummated**. Per testimony of the victim's daughter Marilou dela Cruz, and as found by the trial court, the total value of the articles stolen by the appellant is ₱40,500.00 broken down as follows: 1.) electric guitar - ₱8,000.00; 2.) travelling bag - ₱500.00; 3.) CD component with speaker ₱30,000.00; 4.) wall clock - ₱500.00; and 5.) jewelry items and cash - approximately ₱1,500.00. However, upon cross-examination, she testified that she

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[51] *People v. Moreno*, 425 Phil. 526, 543 (2002).

[52] 409 Phil. 173 (2001).

cannot recall the cost of the wall clock that was reported lost. It was her brother who bought the electric guitar, the cost of which she is not certain. The speakers and the Sony component is worth ₱30,000.00, more or less. She cannot recall how much cash was lost. She also cannot recall how much jewelry was lost.

In view of this, the only evidence that the prosecution was able to present with regard to the value of the things stolen, is that of the CD component which should be valued at ₱500.00, the amount for which appellant admittedly pawned the CD component to Analyn Balmes.[53]

This Court has previously discussed that petitioners are liable for the theft of the entire hand tractor, though its body was subsequently recovered and only the engine was taken or carried away, because the unlawful taking of the whole hand tractor was already completed or consummated the moment the petitioners took it from the farmhouse of the private complainant and brought it to the farmhouse of their father and subjected the same to their control. However, since the value of the lost engine was not properly proven by the prosecution, its value therefor cannot be considered in determining the penalty to be imposed upon the petitioners. Only the value of the body of the hand tractor, which is ₱17,000.00, as evidenced by Official Receipt No. 313,[54] can be considered in determining the imposable penalty upon petitioners.

Under Article 309 of the Revised Penal Code, the penalty for theft when the value of the stolen property is more than ₱12,000.00 but does not exceed ₱22,000.00 is as follows:

Art. 309. *Penalties.* – Any person guilty of theft shall be punished by:

1. The **penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos**; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each

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[53] *Id.* at 190.

[54] Records, p. 110.

additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

x x x [Emphasis supplied].

Applying the Indeterminate Sentence Law, **the minimum of the indeterminate penalty shall be anywhere within the range of the penalty next lower in degree to that prescribed for the offense**, without first considering any modifying circumstance attendant to the commission of the crime.[55] Since the **penalty prescribed by law is *prision mayor* in its minimum and medium periods, the penalty next lower would be *prision correccional* in its medium and maximum periods**. Thus, the minimum of the indeterminate sentence shall be anywhere within 2 years, 4 months and 1 day to 6 years.

The maximum of the indeterminate penalty is that which, taking into consideration the attending circumstances, could be properly imposed under the Revised Penal Code.[56] There being no mitigating or aggravating circumstance and the value of the thing stolen does not exceed ₱22,000.00, the maximum term of the indeterminate penalty, which is *prision mayor* in its minimum and medium periods, should be imposed in the medium period or 7 years, 4 months and 1 day to 8 years and 8 months.

Accordingly, petitioners should be meted out an indeterminate penalty of 3 years, 6 months and 20 days of *prision correccional* as minimum, to 8 years and 8 months of *prision mayor* as maximum.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals dated 23 March 2007 and dated 16 January 2008, respectively, in CA-G.R. CR No. 24212 convicting petitioners for the crime of theft is hereby *AFFIRMED*

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[55] *People v. Dela Cruz*, 383 Phil. 213, 227 (2000).

[56] *Id.*

with the following MODIFICATIONS: (1) the award of actual damages in the amount of ₱12,000.00 in favor of the private complainant is *DELETED* for want of legal basis; and (2) petitioners are sentenced to an indeterminate penalty of 3 years, 6 months and 20 days of *prision correccional*, as minimum, to 8 years and 8 months of *prision mayor*, as maximum. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182177. March 30, 2011]

RICHARD JUAN, *petitioner, vs.* **GABRIEL YAP, SR.,** *respondent.*

SYLLABUS

1. CIVIL LAW; TRUSTS; IMPLIED TRUST; APPLICATION THEREOF, EXPLAINED IN CASE AT BAR.— An implied trust arising from mortgage contracts is not among the trust relationships the Civil Code enumerates. The Code itself provides, however, that such listing "does not exclude others established by the general law on trust x x x." Under the general principles on trust, equity converts the holder of property right as trustee for the benefit of another if the circumstances of its acquisition makes the holder ineligible "in x x x good conscience [to] hold and enjoy [it]." As implied trusts are remedies against unjust enrichment, the "only problem of great importance in the field of constructive trusts is whether in the numerous and varying factual situations presented x x x

there is a wrongful holding of property and hence a threatened unjust enrichment of the defendant." Applying these principles, this Court recognized unconventional implied trusts in contracts involving the purchase of housing units by officers of tenants' associations in breach of their obligations, the partitioning of realty contrary to the terms of a compromise agreement, and the execution of a sales contract indicating a buyer distinct from the provider of the purchase money. In all these cases, the formal holders of title were deemed trustees obliged to transfer title to the beneficiaries in whose favor the trusts were deemed created. We see no reason to bar the recognition of the same obligation in a mortgage contract meeting the standards for the creation of an implied trust.

2. ID.; ID.; ID.; WHEN CREDENCE IS GIVEN TO PAROL EVIDENCE IN ORDER TO PROVE CREATION OF IMPLIED TRUST; EXEMPLIFIED.— Solon, the notary public who drew up and notarized the Contract, testified that he placed petitioner's name in the Contract as the mortgagor upon the instruction of respondent. Respondent himself explained that he found this arrangement convenient because at the time of the Contract's execution, he was mostly abroad and could not personally attend to his businesses in the country. Respondent disclosed that while away, he trusted petitioner, his nephew by affinity and paid employee to "take care of everything." This arrangement mirrors that in *Tigno v. Court of Appeals* where the notary public who drew up a sales contract testified that he placed the name of another person in the deed of sale as the vendee upon instructions of the actual buyer, the source of the purchase money, who had to go abroad to attend to pressing concerns. In settling the competing claims between the nominal buyer and the financier in *Tigno*, we gave credence to the parol evidence of the latter and found the former liable to hold the purchased property in trust of the actual buyer under an implied trust. No reason has been proffered why we should arrive at a different conclusion here. Lastly, it was respondent, not petitioner, who shouldered the payment of the foreclosure expenses. Petitioner's failure to explain this oddity, coupled with the fact that no certificate of sale was issued to him (despite tendering the highest bid) for his non-payment of the commission, undercuts his posturing as the real mortgagor. Clearly then, petitioner holds title over

the mortgaged properties only because respondent allowed him to do so. The demands of equity and justice mandate the creation of an implied trust between the two, barring petitioner from asserting proprietary claims antagonistic to his duties to hold the mortgaged properties in trust for respondent. To arrive at a contrary ruling is to tolerate unjust enrichment, the very evil the fiction of implied trust was devised to remedy.

APPEARANCES OF COUNSEL

Valencia and Valencia and *Hilda Sacay-Clave* for petitioner.
Zosa & Quijano Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This resolves the petition for review[1] of the ruling[2] of the Court of Appeals finding petitioner Richard Juan as trustee of an implied trust over a mortgage contract in favor of respondent Gabriel Yap, Sr.

The Facts

On 31 July 1995, the spouses Maximo and Dulcisima Cañeda (Cañeda spouses) mortgaged to petitioner Richard Juan (petitioner), employee and nephew of respondent Gabriel Yap, Sr. (respondent), two parcels of land in Talisay, Cebu to secure a loan of ₱1.68 million, payable within one year. The Contract was prepared and notarized by Atty. Antonio Solon (Solon).

On 30 June 1998, petitioner, represented by Solon, sought the extrajudicial foreclosure of the mortgage. Although petitioner and respondent participated in the auction sale, the properties

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Decision dated 23 November 2007 and Resolution dated 6 March 2008 per by Associate Justice Isaias P. Dicdican with Associate Justices Stephen C. Cruz and Franchito N. Diamante, concurring.

were sold to petitioner for tendering the highest bid of ₱2.2 million.[3] No certificate of sale was issued to petitioner, however, for his failure to pay the sale's commission.[4]

On 15 February 1999, respondent and the Cañeda spouses executed a memorandum of agreement (MOA) where (1) the Cañeda spouses acknowledged respondent as their "real mortgagee-creditor x x x while Richard Juan [petitioner] is merely a trustee"[5] of respondent; (2) respondent agreed to allow the Cañeda spouses to redeem the foreclosed properties for ₱1.2 million; and (3) the Cañeda spouses and respondent agreed to initiate judicial action "either to annul or reform the [Contract] or to compel Richard Juan to reconvey the mortgagee's rights"[6] to respondent as trustor. Three days later, the Cañeda spouses and respondent sued petitioner in the Regional Trial Court of Cebu City (trial court) to declare respondent as trustee of petitioner *vis a vis* the Contract, annul petitioner's bid for the foreclosed properties, declare the Contract "superseded or novated" by the MOA, and require petitioner to pay damages, attorney's fees and the costs. The Cañeda spouses consigned with the trial court the amount of ₱1.68 million as redemption payment.

In his Answer, petitioner insisted on his rights over the mortgaged properties. Petitioner also counterclaimed for damages and attorney's fees and the turn-over of the owner's copy of the titles for the mortgaged properties.

The Ruling of the Trial Court

The trial court ruled against respondent and his co-plaintiffs and granted reliefs to petitioner by declaring petitioner the "true and real" mortgagee, ordering respondent to pay moral damages

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[3] While the mortgage contract (Exhibit "A", records p. 7) mentioned only two parcels of land, the notice of extrajudicial foreclosure sale (Exhibit "15", folder of exhibits) listed three parcels of land for foreclosure. None of the parties has raised this matter as an issue below or here.

[4] TSN (Arthur Cabigon), 23 April 2004, p. 21.

[5] Records, p. 10.

[6] *Id.* at 11.

and attorney's fees, and requiring respondent to deliver the titles in question to petitioner.[7] The trial court, however, granted the Cañeda spouses' prayer to redeem the property and accordingly ordered the release of the redemption payment to petitioner. In arriving at its ruling, the trial court gave primacy to the terms of the Contract, rejecting respondent's theory in light of his failure to assert beneficial interest over the mortgaged properties for nearly four years.

Respondent appealed to the Court of Appeals (CA), imputing error in the trial court's refusal to recognize a resulting trust between him and petitioner and in granting monetary reliefs to petitioner.

Ruling of the Court of Appeals

The CA granted the petition, set aside the trial court's ruling, declared respondent the Contract's mortgagee, directed the trial court to release the redemption payment to respondent, and ordered petitioner to pay damages and attorney's fees.[8] The

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[7] The dispositive portion of the ruling provides (*Rollo*, p. 93):

WHEREFORE, foregoing premises considered, judgment is hereby rendered by:

1. Declaring defendant as the true and real mortgagee of the parcels of land as covered by the Deed of Real Estate Mortgage, Exhibit "A";

2. The plaintiff Gabriel Yap, Sr. having violated Articles 19, 20 and 21 of the New Civil Code of the Philippines is ordered to pay to defendant Richard Juan in concept of Moral Damages the amount of Php 100,000.00;

3. The plaintiff Gabriel Yap, Sr. is ordered to pay Attorney's Fees in the amount of Php50,000.00 and litigation expenses in the amount of Php25,000.00;

4. The plaintiff Gabriel Yap, Sr. is ordered to return to defendant Richard Juan TCT No. 1600; TCT No. 83727 and TCT No. 80639;

5. The plaintiffs Maximo Cañeda and Dulcisima Cañeda or their heirs and successors in interest is allowed to redeem their mortgaged properties;

6. The money deposited with the Clerk of Court in the sum of Php1,680,000.00 Philippine Currency including the interest thereon be released to defendant Richard Juan, as redemption price.

[8] The dispositive portion of the ruling provides (*id.* at 77):

WHEREFORE, in view of the foregoing premises, the decision of the RTC, Branch 19, in Cebu City in Civil Case No. CEB-23375 is hereby

CA found the following circumstances crucial in its concurrence with respondent's theory, notwithstanding the terms of the Contract: (1) Solon testified that he drew up the Contract naming petitioner as mortgagee upon instructions of respondent; (2) Dulcisima Cañeda acknowledged respondent as the creditor from whom she and her husband obtained the loan the Contract secured; and (3) respondent shouldered the payment of the foreclosure expenses.[9] Instead, however, of annulling the Contract, the CA held that reformation was the proper remedy, with the MOA "serv[ing] as the correction done by the parties to reveal their true intent."[10]

In this petition, petitioner prays for the reversal of the CA's ruling. Petitioner relies on the terms of the Contract, and argues that respondent's proof of a resulting trust created in his favor is weak. Petitioner also assails the award of damages to respondent for lack of basis.

On the other hand, respondent questions the propriety of this petition for raising only factual questions, incompatible with the office of a petition for review on *certiorari*. Alternatively, respondent argues that the pieces of parol evidence the CA used to anchor its ruling are more than sufficient to prove the existence of an implied trust between him and petitioner.

REVERSED and SET ASIDE. Accordingly, a new judgment is hereby rendered as follows:

1. Declaring the plaintiff-appellant as the true mortgagee of the parcels of land covered by the Deed of Real Estate Mortgage dated July 31, 1995;

2. Allowing the plaintiffs-appellees mortgagors to redeem their mortgaged properties;

3. Directing the Clerk of Court of the RTC to release the sum of ₱1,680,000.00, including the interest thereon, to the plaintiff-appellant as redemption price; and

4. Ordering defendant-appellee Richard Juan to pay the plaintiff-appellant the sum of ₱50,000.00 as moral damages; ₱35,000.00 as exemplary damages and ₱20,000.00 as attorney's fees and litigation expenses.

[9] *Id.* at 73-75.

[10] *Id.* at 76.

The Issues

The petition raises the following questions:

(1) Whether an implied trust arose between petitioner and respondent, binding petitioner to hold the beneficial title over the mortgaged properties in trust for respondent; and

(2) Whether respondent is entitled to collect damages.

The Ruling of the Court

We hold in the affirmative on both questions, and thus affirm the CA.

Conflicting Rulings Below Justify Rule 45 Review

The question of the existence of an implied trust is factual,[11] hence, ordinarily outside the purview of a Rule 45 review of purely legal questions.[12] Nevertheless, our review is justified by the need to make a definitive finding on this factual issue in light of the conflicting rulings rendered by the courts below.[13]

Implied Trust in Mortgage Contracts

An implied trust arising from mortgage contracts is not among the trust relationships the Civil Code enumerates.[14] The Code itself provides, however, that such listing "does not exclude others established by the general law on trust x x x."[15] Under the general principles on trust, equity converts the holder of property right as trustee for the benefit of another if the

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[11] *Spouses Rosario v. Court of Appeals*, 369 Phil. 729 (1999); *Tigno v. Court of Appeals*, 345 Phil. 486 (1997).

[12] Section 1, Rule 45, 1997 Rules of Civil Procedure.

[13] We observed the same procedure in *Spouses Rosario v. Court of Appeals*, 369 Phil. 729 (1999) and *Tigno v. Court of Appeals*, 345 Phil. 486 (1997).

[14] See Articles 1448-1454.

[15] Article 1447 ("The enumeration of the following cases of implied trust does not exclude others established by the general law of trust, but the limitation laid down in Article 1442 shall be applicable.").

circumstances of its acquisition makes the holder ineligible "in x x x good conscience [to] hold and enjoy [it]."[16] As implied trusts are remedies against unjust enrichment, the "only problem of great importance in the field of constructive trusts is whether in the numerous and varying factual situations presented x x x there is a wrongful holding of property and hence, a threatened unjust enrichment of the defendant."[17]

Applying these principles, this Court recognized unconventional implied trusts in contracts involving the purchase of housing units by officers of tenants' associations in breach of their obligations,[18] the partitioning of realty contrary to the terms of a compromise agreement,[19] and the execution of a sales contract indicating a buyer distinct from the provider of the purchase money.[20] In all these cases, the formal holders of title were deemed trustees obliged to transfer title to the beneficiaries in whose favor the trusts were deemed created. We see no reason to bar the recognition of the same obligation in a mortgage contract meeting the standards for the creation of an implied trust.

Parol Evidence Favor Respondent

The resolution of this appeal hinges on the appreciation of two conflicting sets of proofs – petitioner's (based on the mortgage contract) or respondent's (based on parol evidence varying the terms of the mortgage contract, allowed under the Civil Code[21]). After a review of the records, we find no reason to reverse the ruling of the CA finding respondent's case convincing.

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[16] *Roa, Jr. v. Court of Appeals*, 208 Phil. 2, 14 (1983), citing 76 Am.Jur.2d. 446-447.

[17] *Heirs of Moreno v. Mactan-Cebu Int.'l Airport Authority*, 459 Phil. 948, 966 (2003) citing G.G. Bogert, Handbook of the Law of Trusts 210 (1963).

[18] *Policarpio v. Court of Appeals*, 336 Phil. 329 (1997); *Arlegui v. Court of Appeals*, 428 Phil. 381 (2002).

[19] *Roa, Jr. v. Court of Appeals, supra*.

[20] *Tigno v. Court of Appeals*, 345 Phil. 486 (1997).

[21] Article 1457 ("An implied trust may be proved by oral evidence.")

In the first place, the Cañeda spouses acknowledged respondent as the lender from whom they borrowed the funds secured by the Contract. They did so in the MOA[22] and Dulcisima Cañeda reiterated the concession on the stand.[23] True enough, when the Cañeda spouses sought an extension of time within which to settle their loan, they directed their request not to petitioner but to respondent who granted the extension.[24] Petitioner, therefore, was a stranger to the loan agreement, the principal obligation the Contract merely secured.

Secondly, Solon, the notary public who drew up and notarized the Contract, testified that he placed petitioner's name in the Contract as the mortgagor upon the instruction of respondent.[25] Respondent himself explained that he found this arrangement convenient because at the time of the Contract's execution, he was mostly abroad and could not personally attend to his businesses in the country.[26] Respondent disclosed that while away, he trusted petitioner, his nephew by affinity and paid employee, to "take care of everything."[27] This arrangement mirrors that in *Tigno v. Court of Appeals*[28] where the notary public who drew up a sales contract testified that he placed the name of another person in the deed of sale as the vendee upon instructions of the actual buyer, the source of the purchase money, who had to go abroad to attend to pressing concerns. In settling the competing claims between the nominal buyer and the financier in *Tigno*, we gave credence to the parol evidence of the latter and found the former liable to hold the purchased property in trust of the actual buyer under an implied trust. No reason has been proffered why we should arrive at a different conclusion here.

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[22] Records, p. 10.

[23] TSN (Dulcisima Cañeda), 5 September 2000, pp. 5-7.

[24] *Id.* at 12.

[25] TSN (Antonio Solon), 29 April 2002, p. 10.

[26] TSN (Gabriel Yap, Sr.), 8 November 2002, p. 14.

[27] *Id.*

[28] 345 Phil. 486 (1997).

Lastly, it was respondent, not petitioner, who shouldered the payment of the foreclosure expenses.[29] Petitioner's failure to explain this oddity, coupled with the fact that no certificate of sale was issued to him (despite tendering the highest bid) for his non-payment of the commission, undercuts his posturing as the real mortgagor.

Clearly then, petitioner holds title over the mortgaged properties only because respondent allowed him to do so. The demands of equity and justice mandate the creation of an implied trust between the two, barring petitioner from asserting proprietary claims antagonistic to his duties to hold the mortgaged properties in trust for respondent. To arrive at a contrary ruling is to tolerate unjust enrichment, the very evil the fiction of implied trust was devised to remedy.

Award of Damages Proper

Nor do we find reversible error in the CA's award of moral and exemplary damages to respondent. Respondent substantiated his claim for the former[30] and the interest of deterring breaches of trusts justifies the latter.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 23 November 2007 and Resolution dated 6 March 2008 of the Court of Appeals.

SO ORDERED.

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

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[29] TSN (Arthur Cabigon), 23 April 2004, pp. 18-21.

[30] TSN (Gabriel Yap, Sr.), 8 November 2002, p. 18.

SECOND DIVISION

[G.R. No. 184980. March 30, 2011]

DANILO MORO, *petitioner, vs.* **GENEROSO REYES DEL CASTILLO, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO;* WHEN AVAILABLE.— An action for *quo warranto* under Rule 66 of the Rules of Court may be filed against one who usurps, intrudes into, or unlawfully holds or exercises a public office. It may be brought by the Republic of the Philippines or by the person claiming to be entitled to such office.

2. ID.; ID.; ID.; DISMISSAL ORDER IS EXECUTORY EVEN PENDING APPEAL; *RATIONALE*.— The Court held in *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH* that Section 7, Rule III of Administrative Order 7, as amended by Administrative Order 17, clearly provides that an appeal shall not stop a decision of the Ombudsman from being executory. The Court later reiterated this ruling in *Office of the Ombudsman v. Court of Appeals*. In *quo warranto*, the petitioner who files the action in his name must prove that he is entitled to the subject public office. Otherwise, the person who holds the same has a right to undisturbed possession and the action for *quo warranto* may be dismissed. Here, Del Castillo brought the action for *quo warranto* in his name on April 4, 2007, months after the Ombudsman ordered his dismissal from service on February 5, 2007. x x x [T]hat dismissal order was immediately executory even pending appeal. Consequently, he has no right to pursue the action for *quo warranto* or reassume the position of Chief Accountant of the GHQ Accounting Center.

APPEARANCES OF COUNSEL

Office of the Judge Advocate General, AFP for petitioner.
Pizarras & Associates Law Office for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the right of the petitioner in an action for *quo warranto* to be reinstated meantime that he has appealed from the Ombudsman's decision dismissing him from the service for, among other grounds, misconduct in office.

The Facts and the Case

On December 7, 2005 the Ombudsman charged respondent Generoso Reyes Del Castillo, Jr. (Del Castillo), then Chief Accountant of the General Headquarters (GHQ) Accounting Center of the Armed Forces of the Philippines (AFP), with dishonesty, grave misconduct and conduct prejudicial to the best interest of the service in OMB-P-A-06-0031-A. The Ombudsman alleged that Del Castillo made false statements in his Statement of Assets and Liabilities from 1996 to 2004 and that he acquired properties manifestly out of proportion to his reported salary.

On April 1, 2006 the GHQ reassigned Del Castillo to the Philippine Air Force (PAF) Accounting Center by virtue of GHQ AFP Special Order 91 (SO 91).[1] Through the same order, petitioner Danilo Moro (Moro), then Chief Accountant of the Philippine Navy, took over the position of Chief Accountant of the GHQ Accounting Center.

Meantime, on August 30, 2006 the Ombudsman placed Del Castillo under preventive suspension for six months and eventually ordered his dismissal from the service on February 5, 2007.[2] The penalty imposed on him included cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government. Del Castillo filed a motion for reconsideration, which is pending to this date.

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[1] Records, p. 113.

[2] *Rollo*, pp. 88-115.

Following the lapse of his six-month suspension or on March 12, 2007 Del Castillo attempted to reassume his former post of GHQ Chief Accountant. But, he was unable to do so since Moro declined to yield the position. Consequently, on April 4, 2007 Del Castillo filed a petition for *quo warranto*[3] against Moro with the Regional Trial Court[4] (RTC) of Parañaque City in Civil Case 07-0111.

Del Castillo claimed that Moro was merely detailed as GHQ Chief Accountant when the Ombudsman placed Del Castillo under preventive suspension. Since the latter's period of suspension already lapsed, he was entitled to resume his former post and Moro was but a usurper.[5]

For his part, Moro pointed out in his Answer[6] that his appointment under SO 91 as GHQ Chief Accountant was a permanent appointment. Indeed, the GHQ had already reassigned Del Castillo to the PAF Accounting Center even before the Ombudsman placed him under preventive suspension. Del Castillo was, therefore, not automatically entitled to return to his former GHQ post despite the lapse of his suspension.

During the pendency of the *quo warranto* case before the RTC, Del Castillo refused to report at the PAF Accounting Center despite a memorandum from the AFP Acting Deputy Chief of Staff for Personnel that carried the note and approval of the AFP Chief of Staff.[7] Del Castillo insisted that he could not be placed under the PAF since he was the GHQ Chief Accountant.[8]

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[3] Records, pp. 41-54.

[4] Branch 274.

[5] Records, pp. 47-48.

[6] *Id.* at 99-111.

[7] *Id.* at 121-122.

[8] *Id.* at 123.

On October 10, 2007 the RTC dismissed Del Castillo's petition,[9] holding that Moro held the position of GHQ Chief Accountant pursuant to orders of the AFP Chief of Staff. Moreover, the RTC found Del Castillo's reassignment to the PAF Accounting Center valid. Under the Civil Service Commission (CSC) Rules, a reassignment may be made for a maximum of one year. Since Del Castillo's preventive suspension kept him away for only six months, he had to return to the PAF to complete his maximum detail at that posting. Besides, said the trial court, the Ombudsman's February 5, 2007 Order, which directed Del Castillo's dismissal from the service for grave misconduct, among others, rendered the petition moot and academic. The RTC denied Del Castillo's motion for reconsideration.

Instead of appealing from the order of dismissal of his action, Del Castillo filed a petition for *certiorari* with the Court of Appeals (CA) in CA-G.R. SP 103470. On October 13, 2008 the CA reversed the RTC Decision.[10] Notwithstanding the procedural error, the CA gave due course to the petition on grounds of substantial justice and fair play. It held that Del Castillo's reassignment exceeded the maximum of one year allowed by law and that SO 91 was void since it did not indicate a definite duration for such reassignment. Further, the CA held as non-executory the Ombudsman's dismissal of Del Castillo in view of his appeal from that dismissal. With the denial of his motion for reconsideration, Moro filed this petition *via* Rule 45 of the Rules of Court.

The Issue Presented

The key issue in this case is whether or not respondent Del Castillo is entitled to be restored to the position of Chief Accountant of the GHQ Accounting Center that he once held.

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[9] *Rollo*, pp. 48-54. Penned by Presiding Judge Fortunito L. Madrona.

[10] *Id.* at 58-87. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Amelita G. Tolentino and Arcangelita M. Romilla-Lontok.

The Court's Ruling

An action for *quo warranto* under Rule 66 of the Rules of Court may be filed against one who usurps, intrudes into, or unlawfully holds or exercises a public office.[11] It may be brought by the Republic of the Philippines or by the person claiming to be entitled to such office.[12] In this case, it was Del Castillo who filed the action, claiming that he was entitled as a matter of right to reassume the position of GHQ Chief Accountant after his preventive suspension ended on March 11, 2007. He argues that, assuming his reassignment to the PAF Accounting Center was valid, the same could not exceed one year. Since his detail at the PAF took effect under SO 91 on April 1, 2006, it could last not later than March 31, 2007. By then, Moro should have allowed him to return to his previous posting as GHQ Chief Accountant.

But, as Moro points out, he had been authorized under SO 91 to serve as GHQ Chief Accountant. Del Castillo, on the other hand, had been ordered dismissed from the service by the Ombudsman in OMB-P-A-06-0031-A. Consequently, he cannot reassume the contested position.

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[11] Rule 66, Section 1. *Action by Government against individuals.*

An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;

(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

[12] Rule 66, Section 5. *When an individual may commence such an action.*

A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

Del Castillo of course insists, citing *Lapid v. Court of Appeals*,[13] that only decisions of the Ombudsman that impose the penalties of public censure, reprimand, or suspension of not more than a month or a fine of one month salary are final, executory, and unappealable. Consequently, when the penalty is dismissal as in his case, he can avail himself of the remedy of appeal and the execution of the decision against him would, in the meantime, be held in abeyance.

But, the *Lapid* case has already been superseded by *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*.[14] The Court held in *Datumanong* that Section 7, Rule III of Administrative Order 7, as amended by Administrative Order 17,[15] clearly provides that an appeal shall not stop a decision of the Ombudsman from

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[13] G.R. No. 142261, June 29, 2000, 334 SCRA 738.

[14] G.R. No. 150274, August 4, 2006, 497 SCRA 626.

[15] Section 7. *Finality and execution of decision.* – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from the receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be ground for disciplinary action against said officer. (Emphasis supplied)

being executory. The Court later reiterated this ruling in *Office of the Ombudsman v. Court of Appeals.*[16]

In *quo warranto*, the petitioner who files the action in his name must prove that he is entitled to the subject public office. Otherwise, the person who holds the same has a right to undisturbed possession and the action for *quo warranto* may be dismissed.[17]

Here, Del Castillo brought the action for *quo warranto* in his name on April 4, 2007, months after the Ombudsman ordered his dismissal from service on February 5, 2007. As explained above, that dismissal order was immediately executory even pending appeal. Consequently, he has no right to pursue the action for *quo warranto* or reassume the position of Chief Accountant of the GHQ Accounting Center.

WHEREFORE, the Court *GRANTS* the petition, *REVERSES* and *SETS ASIDE* the decision dated October 13, 2008 of the Court of Appeals in CA-G.R. SP 103470, and *REINSTATES* the October 10, 2007 decision of the Regional Trial Court in Civil Case 07-0111, which dismissed the complaint for *quo warranto*.

SO ORDERED.

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

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[16] G.R. No. 159395, May 7, 2008, 554 SCRA 75, 93-94.

[17] *Feliciano v. Villasin*, G.R. No. 174929, June 27, 2008, 556 SCRA 348, 366.

FIRST DIVISION

[G.R. No. 189834. March 30, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAY MANDY MAGLIAN *y* REYES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; EXCEPTIONS TO HEARSAY RULE; DYING DECLARATION; WHEN ADMISSIBLE.— While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation." The Rules of Court states that a dying declaration is admissible as evidence if the following circumstances are present: "(a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death."

2. CRIMINAL LAW; MITIGATING CIRCUMSTANCES; NO INTENTION TO COMMIT SO GRAVE A WRONG; CONSTRUED; NOT PRESENT IN CASE AT BAR.— The Revised Penal Code provides under Article 13(3) the mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed. We held, "This mitigating circumstance addresses itself to the intention of the offender at the particular moment when the offender executes or commits the criminal act." We also held, "This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the weapon

used, the mode of attack employed and the injury sustained by the victim." x x x It is extremely far-fetched that accused-appellant could accidentally pour kerosene on his wife and likewise accidentally light her up and cause third degree burns to 90% of her body. We, thus, agree with the trial court's finding that accused-appellant knew the fatal injuries that he could cause when he poured kerosene all over his wife and lit a match to ignite a fire. There was no disparity between the means he used in injuring his wife and the resulting third degree burns on her body. He is, thus, not entitled to the mitigating circumstance under Art. 13(3) of the Code.

3. ID.; ID.; VOLUNTARY SURRENDER; REQUISITES; PRESENT IN CASE AT BAR.— An accused may enjoy the mitigating circumstance of voluntary surrender if the following requisites are present: "1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary." We explained, "The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture." x x x We find that in the case of accused-appellant, all the elements for a valid voluntary surrender were present. Accused-appellant at the time of his surrender had not actually been arrested. He surrendered to the police authorities. His surrender was voluntary, as borne by the certification issued by the police. There is, thus, merit to the claim of accused-appellant that he is entitled to the mitigating circumstance of voluntary surrender.

4. ID.; PARRICIDE; PENALTY.— It bears noting that parricide, however, according to Art. 246 of the Revised Penal Code, is punishable by two indivisible penalties, *reclusion perpetua* to death. The Code provides under Art. 63(3) that when a law prescribes a penalty with two indivisible penalties and the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. But Section 3 of Republic Act No. (RA) 9346 (*An Act Prohibiting the Imposition of Death Penalty in the Philippines*) provides that "persons convicted of offenses 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, as amended." The proper sentence in the instant case would, thus, be *reclusion perpetua* which is still the lesser penalty.

5. ID.; ID.; CIVIL LIABILITY; MONETARY AWARDS, ENUMERATED.— We modify the monetary awards, those being excessive. We award a civil indemnity *ex delicto* as this is "mandatory upon proof of the fact of death of the victim and the culpability of the accused for the death." As We ruled, "When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases." Current jurisprudence pegs the award of civil indemnity at PhP 50,000. Moral damages should also be awarded even absent allegation and proof of the emotional suffering by the victim's heirs. The amount should be decreased to PhP 50,000 in accordance with jurisprudence. Exemplary damages in the lowered amount of PhP 30,000 are likewise in order in this case charging parricide, as the qualifying circumstance of relationship is present. As to the attorney's fees awarded, these must be reasonable in accordance with Art. 2208 of the Civil Code. We, thus, reduce the attorney's fees to a more reasonable amount of PhP 50,000.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Villanueva Villanueva & Bihasa for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the December 23, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02541,

[1] Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Mariano C. Del Castillo and Arcangelita M. Romilla-Lontok.

which affirmed the May 8, 2006 Decision in Criminal Case No. 8393-00 of the Regional Trial Court (RTC), Branch 22 in Imus, Cavite. The RTC found accused Jay Mandy Maglian guilty of parricide.

The Facts

An Information[2] charged the accused as follows:

> That on or about the 4th day of January 2000, in the Municipality of Dasmariñas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court[,] accused with intent to kill, did then and there, willfully, unlawfully, and feloniously attack, assault, and set on fire Mary Jay Rios Maglian, his lawfully wedded spouse, who as a result sustained 90% Third Degree Burns on the face and other vital parts of the body that caused her death, to the damage and prejudice of the heirs of the said Mary Jay Rios Maglian.

During his arraignment, the accused pleaded "not guilty."

The prosecution presented witnesses Lourdes Rios, Norma Saballero, Dr. Ludovino Lagat, Amy Velasquez, and Ramon Orendain. The defense, on the other hand, presented accused Maglian, Atty. Ma. Angelina Barcelo, Atty. Rosemarie Perey-Duque, Police Officer 3 (PO3) Celestino San Jose, and Lourdes Panopio as witnesses.

The facts established during the trial follow.

The accused is a businessman engaged in the lending business and the buying and selling of cars and real estate. He and Atty. Mary Jay Rios (Mary Jay) were married on January 29, 1999. They had a son, Mateo Jay.[3]

On January 4, 2000, the accused and Mary Jay were having dinner at their home in Dasmariñas, Cavite when they got into an argument. The accused did not want Mary Jay to attend a party, causing them to fight. Incensed, the accused collected the clothes that Mary Joy had given him for Christmas and told

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[2] *Rollo*, pp. 4-5.

[3] CA *rollo*, p. 57.

her he would burn them all and started pouring kerosene on the clothes. Mary Jay tried to wrestle the can of kerosene from him and, at the same time, warned him not to pour it on her. Despite his wife's plea, the accused still poured gas on her, thus setting both the clothes and his wife on fire.[4]

The accused brought Mary Jay to the De La Salle University Medical Center in Dasmariñas. After four days, she was transferred by her aunt to the burn unit of the East Avenue Medical Center in Quezon City, where her condition improved. Subsequently, however, the accused transferred her to St. Claire Hospital, which did not have a burn unit. Since her condition deteriorated, Lourdes Rios, Mary Jay's mother, had her transferred to the Philippine General Hospital (PGH) in Manila but she was no longer able to recover. Before she expired, she told her mother what had happened to her, declaring, "*Si Jay Mandy ang nagsunog sa akin*. (Jay Mandy burned me.)" She passed away on February 24, 2000.[5]

The accused, in his defense, said the burning incident was completely accidental. He said it was Mary Jay who was being difficult while they were arguing. She threatened to throw away the clothes he had given her. To spite her, he also took the clothes that she had given him and told her he would burn them all. He then got a match and a gallon of kerosene. Mary Jay caught up with him at the dirty kitchen and took the match and kerosene from him. In the process, they both got wet from the spilled kerosene. She got angry at how he was looking at her and screamed, "*Mandy, Mandy, wag yan, wag yan, ako na lang ang sunugin mo*. (Mandy, don't burn that, burn me instead.)"

Accused, trying to avoid further provoking his wife, left his wife and went upstairs to his son. While climbing the stairs, he heard Mary Jay shouting, "*Mandy, Mandy, nasusunog ako*. (Mandy, I'm burning.)" He ran down the steps and saw the blaze had reached the ceiling of the kitchen. He embraced his wife and called out to his mother to help them. He poured

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[4] *Id.* at 51.

[5] *Id.*

water on her when the fire could not be put out and brought her to the living room. He then carried Mary Jay to the car while shouting for help from the neighbors. In the process, he sustained burns on his legs and arms.[6]

While Mary Jay was still confined at the East Avenue Medical Center, the accused learned from a certain Judge Tanguanco that using "red medicine" would help heal his wife's burn wounds. The hospital, however, did not allow him to use the "red medicine" on Mary Jay. He thus had his wife transferred to PGH. When there was no space at the hospital, she was transferred to St. Claire Hospital with the help of a certain Judge Español. The doctors at St. Claire advised him to stop using the "red medicine" on his wife when her wounds started to get worse and began emitting a foul odor.[7]

The accused asserted that his mother-in-law, Lourdes Rios, and their laundrywoman, Norma Saballero, accused him of burning his wife since his wife's family had been angry with him ever since they got married. His mother-in-law and Mary Jay's siblings used to ask money from them and would get angry with him if they did not receive any help.[8]

The accused likewise claimed that his late wife made a dying declaration in the presence of PO3 Celestino San Jose and Atty. Rosemarie Perey-Duque. This allegation was corroborated by PO3 San Jose, who testified that Mary Jay was a friend and he had visited her at East Avenue Medical Center on January 13, 2000. He was there to take Mary Jay's statement upon instructions of Chief Major Bulalacao.[9] PO3 San Jose narrated the incident during his direct examination by Atty. Bihasa:

Q What, if any, was the reply of Atty. [Mary Joy] Rios?
A She nodded her head.

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

[7] *Id.* at 59.

[8] *Id.* at 60.

[9] Records, p. 20.

Q And after that, what happened next:
A I told her that I will get her statement and she told me that she could give her statement.

Q And after Atty. Rios told you that she was capable of giving her statement, what if any transpired?
A I took her statement, which was in my handwriting.

Q Her statement was in your handwriting but who uttered those statements?
A It was Atty. Rios.[10]

Atty. Duque testified that the last time she spoke with Mary Jay was on January 13, 2000, when she visited her at the hospital along with PO3 San Jose. The statements of Mary Jay were reduced into writing and Atty. Duque helped in lifting the arm of the patient so that she could sign the document.[11]

The Ruling of the Trial Court

The RTC rendered its Decision on May 8, 2006, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds and so it hereby holds that the prosecution had established the guilt of the accused JAY MANDY MAGLIAN *y* REYES beyond reasonable doubt and so it hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*.

Inasmuch as the civil aspect of this case was prosecuted together with the criminal aspect, the accused is also hereby ordered to indemnify the heirs of the deceased the following amounts of:

a. Php500,000 as actual damages
b. Php500,000 as moral damages,
c. Php200,000 as exemplary damages,
d. Php200,000 as attorney's fees; and
e. Cost of suit against the accused.

SO ORDERED.[12]

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[10] *Id.*

[11] CA *rollo*, p. 56.

[12] Records, p. 1130. Penned by Judge Cesar A. Mangrobang.

The Ruling of the Appellate Court

On appeal, accused-appellant faulted the trial court for not giving credence to the dying declaration Mary Jay made to her friends who became defense witnesses. He averred that the trial court erred in not admitting the deposition by oral examination of Atty. Ma. Angelina Barcelo which would corroborate the testimonies of the defense witnesses regarding the handwritten dying declaration of Mary Jay. The trial court was also questioned for giving credence to the perjured and biased testimonies of prosecution witnesses Lourdes Rios and Norma Saballero. Lastly, accused-appellant averred that the trial court erroneously disallowed the defense from presenting Dr. Ma. Victoria Briguela, a qualified psychiatrist, who could testify that Mary Jay's mental, psychological, and emotional condition on February 24, 2000 was disoriented and she could not have made a dying declaration on said date.

The CA upheld the ruling of the trial court. The dying declaration made by Mary Jay to her mother Lourdes and laundrywoman Norma had all the essential requisites and could thus be used to convict accused-appellant. It noted that while the testimonies of Lourdes and Norma on the dying declaration had some inconsistencies, these were immaterial and did not affect their credibility. It observed that no ill motive was presented and proved as to why the prosecution's witnesses would make false accusations against accused-appellant.

Hence, we have this appeal.

On December 14, 2009, this Court required the parties to submit supplemental briefs if they so desired. The People, represented by the Office of the Solicitor General, manifested that it was adopting its previous arguments.

The Issue

In his Supplemental Brief, accused-appellant raises the following issue:

Whether the guilt of accused-appellant has been established beyond reasonable doubt.

Accused-appellant contends that (1) he never or did not intend to commit so grave a wrong as that committed or so grave an offense as the felony charged against him; and (2) that he voluntarily, and of his own free will, surrendered or yielded to the police or government authorities. He claims that the victim's dying declaration showed that what happened to her was an accident. He avers that this was corroborated by three witnesses. The victim's attending physician, he insists, also testified that he was told by the victim that what happened to her was an accident.

If not acquitted, accused-appellant argues that, in the alternative, his sentence must be reduced due to mitigating circumstances of no intention to commit so grave a wrong and voluntary surrender. He claims he is entitled to the latter since he voluntarily surrendered to the authorities before criminal proceedings were commenced against him. The reduction of his sentence, he contends, must be by at least another degree or to *prision mayor* or lower.

The Ruling of the Court

We affirm accused-appellant's conviction.

Dying declaration

While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case."[13] It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."[14]

The Rules of Court states that a dying declaration is admissible as evidence if the following circumstances are present: "(a) it

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[13] *Marturillas v. People*, G.R. No. 163217, April 18, 2006, 487 SCRA 273, 305.

[14] *People v. Cerilla*, G.R. No. 177147, November 28, 2007, 539 SCRA 251, 262.

concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death."[15] The question to be answered is which dying declaration satisfies the aforementioned circumstances, the one made by Mary Jay to Lourdes and Norma, or the one she made before Atty. Duque and PO3 San Jose.

Accused-appellant contends that his late wife's dying declaration as told to the defense witnesses Atty. Duque and PO3 San Jose effectively absolved him from any wrongdoing. However, it is the dying declaration presented by the prosecution that satisfies all the requisites provided in the Rules. In contrast, the dying declaration for the defense did not show that Mary Jay's death at the time of said declaration appeared to be imminent and that she was under a consciousness of impending death.

Moreover, We defer to the factual finding that the witnesses for the prosecution were more credible. Mary Jay's dying declaration to her mother Lourdes and to Norma showed that accused-appellant was the one who set her in flames. Lourdes and the Maglians' laundrywoman Norma both testified that Mary Jay, moments before her actual death, told them that it was accused-appellant who was responsible for burning her. Lourdes and Norma both testified that at the time of May Jay's declaration, she was lucid and aware that she was soon going to expire. Furthermore, the so-called dying declaration made by Mary Jay to defense witnesses Atty. Duque and PO3 San Jose suffers from irregularities. The dying declaration allegedly made to Atty. Duque and PO3 San Jose was handwritten by the latter but he did not have it sworn under oath. We reiterate too that it was not clear that it was executed with the knowledge

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[15] *Geraldo v. People*, G.R. No. 173608, November 20, 2008, 571 SCRA, 420, 430.

of impending death since the statements were made more than a month before Mary Jay died.

We agree with the trial and appellate courts that Lourdes and Norma were both credible witnesses and had no motive to lie about Mary Jay's dying declaration. The appellate court correctly pointed out that although Lourdes was Mary Jay's mother, this relationship did not automatically discredit Lourdes' testimony. And while accused-appellant alleged that Lourdes as his mother-in-law did not approve of him, he could not give any improper motive for Norma to falsely accuse him. Between the two competing statements of the two sets of witnesses, the one presented by the prosecution should clearly be given more weight as it satisfies the requisites of an admissible dying declaration.

No intent to commit so grave a wrong

The Revised Penal Code provides under Article 13(3) the mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed. We held, "This mitigating circumstance addresses itself to the intention of the offender at the particular moment when the offender executes or commits the criminal act."[16] We also held, "This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the weapon used, the mode of attack employed and the injury sustained by the victim."[17]

Aiming for this mitigating circumstance, accused-appellant once again relies on the statements of the defense witnesses that Mary Jay told them what happened to her was an accident. However, as earlier discussed, Mary Jay's dying declaration contradicts the alleged exculpatory statement she earlier made to the defense witnesses. Moreover, the prosecution took pains

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[16] *People v. Badriago*, G.R. No. 183566, May 8, 2009, 587 SCRA 820, 837.

[17] *People v. Gonzalez, Jr.*, G.R. No. 139542, June 21, 2001, 359 SCRA 352, 379.

in court to demonstrate that fighting over the kerosene container would not have caused Mary Jay to be drenched in kerosene. As aptly explained by the trial court:

> The court is convinced that the deceased did not take possession of the gallon container with kerosene. The accused had full control and possession of the same. He is a bulky and very muscular person while the deceased was of light built, shorter, smaller and weaker. When a demonstration was made in open court about the struggle for possession of the container, it was shown that the contents of the same did not spill owing to the little amount of liquid and its narrow opening. To be able to wet 90 percent of the body surface the kerosene content of the gallon container must have been poured over the head of the deceased. This explains why when she got ignited, the flames rose up to the ceiling and burned her from head to toe.[18]

It is extremely far-fetched that accused-appellant could accidentally pour kerosene on his wife and likewise accidentally light her up and cause third degree burns to 90% of her body. We, thus, agree with the trial court's finding that accused-appellant knew the fatal injuries that he could cause when he poured kerosene all over his wife and lit a match to ignite a fire. There was no disparity between the means he used in injuring his wife and the resulting third degree burns on her body. He is, thus, not entitled to the mitigating circumstance under Art. 13(3) of the Code.

Voluntary surrender

An accused may enjoy the mitigating circumstance of voluntary surrender if the following requisites are present: "1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary."[19] We explained, "The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the

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[18] CA *rollo*, p. 73.

[19] *De Vera v. De Vera*, G.R. No. 172832, April 6, 2009, 584 SCRA 506, 515.

authorities the trouble and expense that may be incurred for his search and capture."[20]

To avail himself of this mitigating circumstance, accused-appellant claims that he voluntarily yielded to the police authorities on October 14, 2002, or before the commencement of the criminal proceedings against him. He avers that this claim is backed by the records of the case and a certification made by the Dasmariñas Police Station. He contends that both the RTC and the CA inexplicably did not appreciate this mitigating circumstance in his favor.

A review of the records shows that accused-appellant on October 16, 2000 filed with the Department of Justice (DOJ) a Petition for Review of the Resolution of the private prosecutor in the instant case. Subsequently, a warrant of arrest for the parricide charge was issued against him on October 30, 2000.[21] However, a Motion to Defer Implementation of Warrant of Arrest was filed by accused on November 13, 2000[22] and was granted by the RTC on December 12, 2000 in view of the petition for review he had filed before the DOJ.[23] On September 11, 2002, the DOJ issued a Resolution[24] denying the petition of accused-appellant. The defense later submitted a Certification[25] issued by the Philippine National Police-Dasmariñas Municipal Police Station dated October 18 2002 stating the following:

THIS IS TO CERTIFY that the following are excerpts fom the entries on the Official Police Blotter of Dasmariñas Municipal Police Station, appearing on page 0331 and 0332, blotter entry nos. 1036 and 1047 respectively, dated 15 October 2002, quoted verbatim as follows:

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[20] *Id.*

[21] Records, p. 55.

[22] *Id.* at 57.

[23] *Id.* at 54.

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

[25] *Id.* at 199.

150740H October 2002 – "P/I Apolinar P. Reyes reported that one Jaymandy Maglian *y* Reyes, 30 years old, resident of #24 Bucal, Sampalok II, Dasmariñas, Cavite, with Warrant of Arrest issued by RTC Branch 21, Imus, Cavite, in CC# 8393-00 for Parricide, voluntarily surrendered to him on October 14, 2002. Subject is turned over to this station on this date."

151350H October 2002 – "One Jaymandy Maglian was transferred to BJMP and escorted by P/I Apolinar Reyes."

(Entries written by SPO3 Ricardo V. Sayoto – duty desk officer)

We find that in the case of accused-appellant, all the elements for a valid voluntary surrender were present. Accused-appellant at the time of his surrender had not actually been arrested. He surrendered to the police authorities. His surrender was voluntary, as borne by the certification issued by the police. There is, thus, merit to the claim of accused-appellant that he is entitled to the mitigating circumstance of voluntary surrender.

It bears noting that parricide, however, according to Art. 246 of the Revised Penal Code, is punishable by two indivisible penalties, *reclusion perpetua* to death. The Code provides under Art. 63(3) that when a law prescribes a penalty with two indivisible penalties and the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. But Section 3 of Republic Act No. (RA) 9346 (*An Act Prohibiting the Imposition of Death Penalty in the Philippines*) provides that "persons convicted of offenses 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, as amended." The proper sentence in the instant case would, thus, be *reclusion perpetua* which is still the lesser penalty.

Anent an issue previously raised by accused-appellant and which was not discussed by the CA, while accused-appellant claims that the trial court erred in not admitting the deposition by oral examination of Atty. Ma. Angelina Barcelo, We note

that the records show that an Order[26] was issued by Judge Norberto J. Quisumbing, Jr. granting accused-appellant's motion to take oral deposition of Atty. Barcelo.

Pecuniary liability

The trial court ordered accused-appellant to pay PhP 500,000 as actual damages; PhP 500,000 as moral damages; PhP 200,000 as exemplary damages; and PhP 200,000 as attorney's fees.

We modify the monetary awards, those being excessive. We award a civil indemnity *ex delicto* as this is "mandatory upon proof of the fact of death of the victim and the culpability of the accused for the death."[27] As We ruled, "When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases."[28] Current jurisprudence pegs the award of civil indemnity at PhP 50,000.[29]

Moral damages should also be awarded even absent allegation and proof of the emotional suffering by the victim's heirs. The amount should be decreased to PhP 50,000 in accordance with jurisprudence.[30] Exemplary damages in the lowered amount of PhP 30,000 are likewise in order in this case charging parricide, as the qualifying circumstance of relationship is present.[31]

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[26] *Id.* at 127-128.

[27] *People v. Español*, G.R. No. 175603, February 13, 2009, 579 SCRA 326, 340.

[28] *People v. Lopez*, G.R. No. 176354, August 3, 2010.

[29] *People v. Combate*, G.R. No. 189301, December 15, 2010.

[30] *Id.*

[31] *People v. Tibon*, G.R. No. 188320, June 29, 2010, 622 SCRA 510, 522. See also *People v. Malibiran*, G.R. No. 178301, April 24, 2009, 586 SCRA 668, 705.

As to the attorney's fees awarded, these must be reasonable in accordance with Art. 2208 of the Civil Code.[32] We, thus, reduce the attorney's fees to a more reasonable amount of PhP 50,000.

WHEREFORE, the appeal is *DENIED.* The CA Decision in CA-G.R. CR-H.C. No. 02541 affirming the RTC Decision that found accused-appellant guilty beyond reasonable doubt of parricide is *AFFIRMED* with *MODIFICATION*. The *fallo* of the RTC Decision should be modified to read, as follows:

> WHEREFORE, premises considered, this Court finds and so it hereby holds that the prosecution had established the guilt of the accused JAY MANDY MAGLIAN *y* REYES beyond reasonable doubt and so it hereby sentences him to suffer the penalty of RECLUSION PERPETUA.
>
> Inasmuch as the civil aspect of this case was prosecuted together with the criminal aspect, the accused is also hereby ordered to indemnify the heirs of the deceased the following amounts of:
>
> a. PhP 500,000 as actual damages;
> **b. PhP 50,000 as civil indemnity;**
> **c. PhP 50,000 as moral damages;**
> **d. PhP 30,000 as exemplary damages;**
> **e. PhP 50,000 as attorney's fees;** and
> f. Cost of suit against accused-appellant.
>
> **SO ORDERED.**

Corona, C.J. (Chairperson), Leonardo-de Castro, Brion,[*] and *Perez, JJ.*, concur.

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[32] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[*] Additional member per Raffle dated October 11, 2010.

THIRD DIVISION

[A.M. No. P-11-2922. April 4, 2011]
(Formerly A.M. OCA IPI No. 03-1778-P)

MARY JANE ABANAG, *complainant, vs.* **NICOLAS B. MABUTE, Court Stenographer I, Municipal Circuit Trial Court (MCTC), Paranas, Samar,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; IMMORAL CONDUCT; DEFINED.— The Court defined immoral conduct as conduct that is willful, flagrant or shameless, and that shows a moral indifference to the opinion of the good and respectable members of the community. To justify suspension or disbarment, the act complained of must not only be immoral, but grossly immoral. A grossly immoral act is one that is so corrupt and false as to be constitute a criminal act or an act so unprincipled or disgraceful as to be reprehensible to a high degree.

2. ID.; ID.; ID.; ID.; MERE SEXUAL RELATIONS BETWEEN TWO UNMARRIED AND CONSENTING ADULTS ARE NOT ENOUGH TO WARRANT ADMINISTRATIVE SANCTION FOR ILLICIT BEHAVIOR.— Based on the allegations of the complaint, the respondent's comment, and the findings of the Investigating Judge, we find that the acts complained of cannot be considered as disgraceful or grossly immoral conduct. We find it evident that the sexual relations between the complainant and the respondent were consensual. They met at the Singles for Christ, started dating and subsequently became sweethearts. The respondent frequently visited the complainant at her boarding house and also at her parents' residence. The complainant voluntarily yielded to the respondent and they eventually lived together as husband and wife in a rented room near the respondent's office. They continued their relationship even after the complainant had suffered a miscarriage. Mere sexual relations between two unmarried and consenting adults are not enough to warrant administrative sanction for illicit

behavior. The Court has repeatedly held that voluntary intimacy between a man and a woman who are not married, where both are not under any impediment to marry and where no deceit exists, is neither a criminal nor an unprincipled act that would warrant disbarment or disciplinary action.

3. ID.; ID.; ID.; ID.; WHILE THE COURT HAS THE POWER TO REGULATE OFFICIAL CONDUCT AND, TO A CERTAIN EXTENT, PRIVATE CONDUCT, IT IS NOT WITHIN ITS AUTHORITY TO DECIDE ON MATTERS TOUCHING ON EMPLOYEE'S PERSONAL LIVES, ESPECIALLY THOSE THAT WILL AFFECT THEIR FAMILY'S FUTURE.— While the Court has the power to regulate official conduct and, to a certain extent, private conduct, it is not within our authority to decide on matters touching on employees' personal lives, especially those that will affect their and their family's future. We cannot intrude into the question of whether they should or should not marry. However, we take this occasion to remind judiciary employees to be more circumspect in their adherence to their obligations under the Code of Professional Responsibility. The conduct of court personnel must be free from any taint of impropriety or scandal, not only with respect to their official duties but also in their behavior outside the Court as private individuals. This is the best way to preserve and protect the integrity and the good name of our courts.

D E C I S I O N

BRION, *J.*:

We resolve the administrative case against Nicolas B. Mabute (*respondent*), Court Stenographer I in the Municipal Circuit Trial Court (*MCTC*) of Paranas, Samar, filed by Mary Jane Abanag (*complainant*) for Disgraceful and Immoral Conduct.

In her verified letter-complaint dated September 19, 2003, the complainant, a 23-year old unmarried woman, alleged that respondent courted her and professed his undying love for her. Relying on respondent's promise that he would marry her, she agreed to live with him. She became pregnant, but after several

months into her pregnancy, respondent brought her to a "*manghihilot*" and tried to force her to take drugs to abort her baby. When she did not agree, the respondent turned cold and eventually abandoned her. She became depressed resulting in the loss of her baby. She also stopped schooling because of the humiliation that she suffered.

In his comment on the complaint submitted to the Office of the Court Administrator, the respondent vehemently denied the complainant's allegations and claimed that the charges against him were baseless, false and fabricated, and were intended to harass him and destroy his reputation. He further averred that Norma Tordesillas, the complainant's co-employee, was using the complaint to harass him. Tordesillas resented him because he had chastised her for her arrogant behavior and undesirable work attitude. He believes that the complainant's letter-complaint, which was written in the vernacular, was prepared by Tordesillas who is from Manila and fluent in Tagalog; the respondent would have used the "*waray*" or English language if she had written the letter-complaint.

The complainant filed a Reply, insisting that she herself wrote the letter-complaint. She belied the respondent's claim that she was being used by Tordesillas who wanted to get even with him.

In a Resolution dated July 29, 2005, the Court referred the letter-complaint to then Acting Executive Judge Carmelita T. Cuares of the Regional Trial Court (RTC) of Catbalogan City, Samar for investigation, report and recommendation.

The respondent sought Judge Cuares' inhibition from the case, alleging that the Judge was partial and had bias in favor of the complainant; the complainant herself had bragged that she personally knew Judge Cuares. The Court designated Judge Esteban V. dela Peña, who succeeded Judge Cuares as Acting Executive Judge, to continue with the investigation of the case.[1] Eventually, Judge Agerico A. Avila took over the investigation

[1] Per Resolution dated February 13, 2006.

when he was designated the Executive Judge of the RTC of Catbalogan City, Samar.

In his Report/Recommendation dated June 7, 2010,[2] Executive Judge Avila reported on the developments in the hearing of the case. The complainant testified that she met the respondent while she was a member of the Singles for Christ. They became acquainted and they started dating. The relationship blossomed until they lived together in a rented room near the respondent's office.

The respondent, for his part, confirmed that he met the complainant when he joined the Singles for Christ. He described their liaison as a dating relationship. He admitted that the complainant would join him at his rented room three to four times a week; when the complainant became pregnant, he asked her to stay and live with him. He vehemently denied having brought the complainant to a local "*manghihilot*" and that he had tried to force her to abort her baby. He surmised that the complainant's miscarriage could be related to her epileptic attacks during her pregnancy. The respondent further testified that the complainant's mother did not approve of him, but the complainant defied her mother and lived with him. He proposed marriage to the complainant, but her mother did not like him as a son-in-law and ordered the complainant to return home. The complainant obeyed her mother. They have separated ways since then, but he pledged his undying love for the complainant.

The Investigating Judge recommends the dismissal of the complaint against the respondent, reporting that:

> Normally the personal affair of a court employee who is a bachelor and has maintained an amorous relation with a woman equally unmarried has nothing to do with his public employment. The sexual liaison is between two consenting adults and the consequent pregnancy is but a natural effect of the physical intimacy. Mary Jane was not forced to live with Nicolas nor was she impelled by some devious means or machination. The fact was, she freely acceded to cohabit with him. The situation may-not-be-so-ideal but it does not

[2] *Rollo,* pp. 163-174.

give cause for administrative sanction. There appears no law which penalizes or prescribes the sexual activity of two unmarried persons. So, the accusation of Mary Jane that Nicolas initiated the abortion was calculated to bring the act within the ambit of an immoral, disgraceful and gross misconduct. Except however as to the self-serving assertion that Mary Jane was brought to a local midwife and forced to take the abortifacient, there was no other evidence to support that it was in fact so. All pointed to a harmonious relation that turned sour. In no small way Mary Jane was also responsible of what befell upon her.[3]

The Court defined immoral conduct as conduct that is willful, flagrant or shameless, and that shows a moral indifference to the opinion of the good and respectable members of the community.[4] To justify suspension or disbarment, the act complained of must not only be immoral, but grossly immoral.[5] A grossly immoral act is one that is so corrupt and false as to constitute a criminal act or an act so unprincipled or disgraceful as to be reprehensible to a high degree.[6]

Based on the allegations of the complaint, the respondent's comment, and the findings of the Investigating Judge, we find that the acts complained of cannot be considered as disgraceful or grossly immoral conduct.

We find it evident that the sexual relations between the complainant and the respondent were consensual. They met at the Singles for Christ, started dating and subsequently became sweethearts. The respondent frequently visited the complainant at her boarding house and also at her parents' residence. The complainant voluntarily yielded to the respondent and they eventually lived together as husband and wife in a rented room near the respondent's office. They continued their relationship even after the complainant had suffered a miscarriage.

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[3] *Id*. at 172-173.

[4] *Toledo v. Toledo,* A.M. No. P-07-2403, February 6, 2008, 544 SCRA 26.

[5] *Ibid.; Reyes v. Wong,* Adm. Case No. 547, January 29, 1975, 63 SCRA 667.

[6] *Figueroa v. Barranco, Jr.,* SBC Case No. 519, July 31, 1997, 276 SCRA 445.

Mere sexual relations between two unmarried and consenting adults are not enough to warrant administrative sanction for illicit behavior.[7] The Court has repeatedly held that voluntary intimacy between a man and a woman who are not married, where both are not under any impediment to marry and where no deceit exists, is neither a criminal nor an unprincipled act that would warrant disbarment or disciplinary action.[8]

While the Court has the power to regulate official conduct and, to a certain extent, private conduct, it is not within our authority to decide on matters touching on employees' personal lives, especially those that will affect their and their family's future. We cannot intrude into the question of whether they should or should not marry.[9] However, we take this occasion to remind judiciary employees to be more circumspect in their adherence to their obligations under the Code of Professional Responsibility. The conduct of court personnel must be free from any taint of impropriety or scandal, not only with respect to their official duties but also in their behavior outside the Court as private individuals. This is the best way to preserve and protect the integrity and the good name of our courts.[10]

WHEREFORE, the Court resolves to *DISMISS* the present administrative complaint against Nicolas B. Mabute, Stenographer 1 of the Municipal Circuit Trial Court, Paranas, Samar, for lack of merit. No costs.

SO ORDERED.

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

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[7] *Concerned Employee v. Mayor,* A.M. No. P-02-1564, November 23, 2004, 443 SCRA 448; and *Toledo v. Toledo, supra* note 4.

[8] *Figueroa v. Barranco, Jr., supra* note 6.

[9] *Salazar v. Limeta,* A.M. No. P-04-1908, August 16, 2005, 467 SCRA 27; and *Toledo v. Toledo, supra* note 4.

[10] *Toledo v. Toledo, supra* note 4.

THIRD DIVISION

[G.R. No. 149193. April 4, 2011]

RICARDO B. BANGAYAN, *petitioner, vs.* **RIZAL COMMERCIAL BANKING CORPORATION and PHILIP SARIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF PRIVATE DOCUMENT; FORGERY CANNOT BE PRESUMED AND MUST BE PROVEN BY CLEAR, POSITIVE AND CONVINCING EVIDENCE.— Both the trial and the appellate courts gave credence to the Surety Agreement, which categorically guaranteed the four corporations' obligations to respondent RCBC under the letters of credit. Petitioner Bangayan did not provide sufficient reason for the Court to reverse these findings. The evidence on records supports the conclusion arrived at by the lower court and the Court of Appeals. *First,* aside from his bare allegations, petitioner Bangayan failed to establish how his signature in the Surety Agreement was forged and therefore, not genuine. Before a private document is offered as authentic, its due execution and authenticity must be proved: (a) either by anyone who has seen the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker. As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The burden of proof rests on the party alleging forgery. Mere allegation of forgery is not evidence. Mr. Lao, witness for respondent RCBC, identified the Surety Agreement as well as the genuineness of petitioner Bangayan's signature therein using petitioner's signature cards in his bank accounts. The trial and the appellate courts gave due credence to the identification and authentication of the Surety Agreement made by Mr. Lao. In *Deheza-Inamarga v. Alano,* The Court ruled that: **The question for forgery is one of fact**. It is well-settled that when supported by substantial evidence or borne out by the records, the findings of fact of the Court of Appeals are conclusive and binding on the parties

and are not reviewable by this Court. It is a hornbook doctrine that the findings of fact of trial courts are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons. It is not a function of this Court to analyze and weigh evidence by the parties all over again. Our jurisdiction is limited to reviewing errors of law that might have been committed by the Court of Appeals. **Where the factual findings of the trial court are affirmed *in toto* by the Court of Appeals as in this case, there is great reason for not disturbing such findings and for regarding them as not reviewable by this Court.** Furthermore, petitioner Bangayan did not adduce any evidence to support his claim of forgery, despite the opportunity to do so. Considering that there was evidence on record of his genuine signature and handwriting (the signature card and the dishonored checks themselves), nothing should have prevented petitioner Bangayan from submitting the Surety Agreement for examination or comparison by a handwriting expert. Even respondent RCBC did not interpose any objection when the possibility of forwarding the signature card and Surety Agreement to the National Bureau of Investigation for examination was raised during the testimony of Mr. Lao. xxx Despite his intention to have the signatures in the Surety Agreement compared with those in the signature cards, petitioner Bangayan did not have the questioned document examined by a handwriting expert in rebuttal and simply relied on his bare allegations. There is no clear, positive and convincing evidence to show that his signature in the Surety Agreement was indeed forged. As petitioner failed to discharge his burden of demonstrating that his signature was forged, there is no reason to overturn the factual findings of the lower courts with respect to the genuineness and due execution of the Surety Agreement.

2. ID.; COURTS; TRIAL COURTS HAVE PLENARY CONTROL OF THE PROCEEDINGS INCLUDING THE JUDGMENT, AND IN THE EXERCISE OF A SOUND JUDICIAL DISCRETION, MAY TAKE SUCH PROPER ACTION IN THIS REGARD AS TRUTH AND JUSTICE MAY REQUIRE.— Discretionary power is generally exercised by trial judges in furtherance of the convenience of the courts and the litigants, the expedition of business, and in the decision of interlocutory matters on conflicting facts where one tribunal could not easily prescribe to another the appropriate rule of

procedure. Thus, the Court ruled: In its very nature, the discretionary control conferred upon the trial judge over the proceedings had before him implies the absence of any hard-and-fast rule by which it is to be exercised, and in accordance with which it may be reviewed. **But the discretion conferred upon the courts is not a willful, arbitrary, capricious and uncontrolled discretion. It is a sound, judicial discretion which should always be exercised with due regard to the rights of the parties and the demands of equity and justice.** As we said in the case of *The Styria vs. Morgan* (186 U.S., 1, 9): "The establishment of a clearly defined rule of action would be the end of discretion, and **yet discretion should not be a word for arbitrary will or inconsiderate action**." So in the case of *Goodwin vs. Prime* (92 Me., 355), it was said that "**discretion implies that in the absence of positive law or fixed rule the judge is to decide by his view of expediency or by the demands of equity and justice**." There being no "positive law or fixed rule" to guide the judge in the court below in such cases, there is no "positive law or fixed rule" to guide a court of appeals in reviewing his action in the premises, and such **courts will not therefore attempt to control the exercise of discretion by the court below unless it plainly appears that there was "inconsiderate action" or the exercise of mere "arbitrary will", or in other words that his action in the premises amounted to "an abuse of discretion**." But the right of an appellate court to review judicial acts which lie in the discretion of inferior courts may properly be invoked upon a showing of a strong and clear case of abuse of power to the prejudice of the appellant, or that the ruling objected to rested on an erroneous principle of law not vested in discretion. Prior to a final judgment, trial courts have plenary control over the proceedings including the judgment, and in the exercise of a sound judicial discretion, may take such proper action in this regard as truth and justice may require. In the instant case, the trial court was within the exercise of its discretion and plenary control of the proceedings when it reconsidered *motu propio* its earlier order striking out the testimony of Mr. Lao and ordered it reinstated. The order of the judge cannot be considered as "willful, arbitrary, capricious and uncontrolled discretion," since his action allowed respondent bank to present its case fully, especially considering that Mr. Lao was the sole witness for the defense.

3. ID.; CIVIL PROCEDURE; MODES OF DISCOVERY; REMEDIES OF A PARTY IN CASES OF FAILURE TO COMPLY WITH THE RULES OF DISCOVERY.— The Court finds that petitioner Bangayan's argument as regards the bank's purported failure to comply with the rules of discovery is not substantive enough to warrant further discussion by this Court. Petitioner has not alleged any different outcome that would be generated if we were to agree with him on this point. If petitioner is unsatisfied with respondent RCBC's responses, then his remedy is to expose the falsity (if any) of the bank's responses in the various modes of discovery during the trial proper. He could have confronted respondent with contradictory statements, testimonies or other countervailing evidence. The Court affirms the findings of the appellate court that the rules of discovery were not treated lightly by respondent RCBC.

4. CIVIL LAW; CONTRACTS; SURETY AGREEMENT; MERE ABSENCE OF NOTARIZATION DOES NOT NECESSARILY RENDER THE SURETY AGREEMENT INVALID; NOTARIZATION IS NOT AN ESSENTIAL REQUISITE FOR THE VALIDITY THEREOF.— The mere absence of notarization does not necessarily render the Surety Agreement invalid. Notarization of a private document converts the document into a public one, renders it admissible in court without further proof of its authenticity, and is entitled to full faith and credit upon its face. However, the irregular notarization — or, for that matter, the lack of notarization — does not necessarily affect the validity of the contract reflected in the document. On its face, the Surety Agreement is not notarized, even if respondent RCBC's standard form for that agreement makes provisions for it. The non-completion of the notarization form, however, does not detract from the validity of the agreement, especially in this case where the genuineness and due authenticity of petitioner Bangayan's signature in the contract was not successfully assailed. The failure to notarize the Surety Agreement does not invalidate petitioner Bangayan's consent to act as surety for the nine corporations' obligations to respondent RCBC. Contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present and the notarization is **not** an essential requisite for the validity of a Surety Agreement.

5. ID.; ID.; ID.; THE FACT THAT THE ANNEX OF THE SURETY AGREEMENT DOES NOT BEAR PETITIONER'S SIGNATURE IS NOT SUFFICIENT TO INVALIDATE THE MAIN AGREEMENT ALTOGETHER.— That the annex of the Surety Agreement does not bear petitioner Bangayan's signature is not a sufficient ground to invalidate the main agreement altogether. As the records will bear out, the Surety Agreement enumerated the names of the corporation whose obligations petitioner Bangayan are securing. The annex to the Surety Agreement enumerated not only the names of the corporations but their respective addresses as well. The corporations enumerated in the annex correspond to the nine corporations enumerated in the main body of the Surety Agreement. Ordinarily, the name and address of the principal borrower whose obligation is sought to be assured by the surety is placed in the body of the agreement, but in this case the addresses could not all fit in the body of the document, thus, requiring that the address be written in an annex. The Surety Agreement itself noted that the principal places of business and postal addresses of the nine corporations were to be found in an "attached" document.

6. ID.; ID.; ID.; PETITIONER NEVER CONTESTED THE EXISTENCE OF THE SURETY AGREEMENT PRIOR TO THE FILING OF COMPLAINT.— Petitioner Bangayan never contested the existence of the Surety Agreement prior to the filing of the Complaint. When Mr. Lao informed him of the letter from the BOC regarding the failure of the three corporations to pay the customs duties under the letters of credit, the petitioner assured respondent bank that "he is doing everything he can to solve the problem." If petitioner Bangayan purportedly never signed the Surety Agreement, he would have been surprised or at least perplexed that respondent RCBC would contact him regarding the three corporations' letters of credit, when, as he claims, he never agreed to act as their surety. Instead, he acknowledged the situation and even offered to solve the predicament of these borrower corporations. In fact, Atty. Loyola, petitioner's counsel in this case, even obtained copies of the BOC receipts after the three corporations paid the customs duties for their importation under the letters of credit giving a possible interpretation that petitioner was himself answering the obligations of the three corporations for the unpaid customs duties.

7. ID.; ID.; ID.; WHATEVER DAMAGE TO PETITIONER'S INTEREST OR REPUTATION FROM THE DISHONOR OF THE SEVEN CHECKS WAS A CONSEQUENCE OF HIS AGREEMENT TO ACT AS A SURETY FOR THE CORPORATIONS AND THEIR FAILURE TO PAY THEIR LOAN OBLIGATIONS, ADVANCES AND OTHER EXPENSES.— It must be emphasized that petitioner Bangayan did not complain against the four corporations which had benefitted from his bank account. He claims to have no reasonable connection to these borrower corporations and denies having signed the Surety Agreement. If true, nothing should have stopped him from taking these corporations to court and demanding compensation as well as damages for their unauthorized use of his bank account. Yet, these bank accounts were put on hold and/or depleted by the letters of credit issued to the four entities. That petitioner did not include them in the present suit strengthens the finding that he had indeed consented to act as surety for those entities, and that there seems to be no arm's length relationship between petitioner and the three entities. Whatever damage to petitioner Bangayan's interest or reputation from the dishonor of the seven checks was a consequence of his agreement to act as surety for the corporations and their failure to pay their loan obligations, advances and other expenses.

8. ID.; DAMAGES; ACTUAL OR COMPENSATORY; THE TRIAL AND APPELLATE COURTS COMMITTED NO REVERSIBLE ERROR IN DISALLOWING AWARD OF DAMAGES SINCE THERE WAS NO MALICE OR BAD FAITH ON THE PART OF RESPONDENT BANK IN DISHONORING THE SUBJECT CHECKS.— Under Articles 2199 and 2200 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of or in recompense for loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done**.** In all seven dishonored checks, respondent RCBC properly exercised its right as a creditor under the Surety Agreement to apply petitioner Bangayan's funds in his accounts as security for the obligations of the four corporations under the letters of credit. Thus, petitioner Bangayan cannot attribute any wrong or misconduct to respondent RCBC since there was no malice or bad faith on

the part of respondent in dishonoring the checks. Any damage to petitioner arising from the dishonor of those checks was brought about, not by the bank's actions, but by the corporations that defaulted on their obligations that petitioner had guaranteed to pay. The trial and the appellate courts, therefore, committed no reversible error in disallowing the award of damages to petitioner.

9. MERCANTILE LAW; LETTERS OF CREDIT; THE "INDEPENDENCE PRINCIPLE" IN LETTERS OF CREDIT ASSURES THE SELLER OR THE BENEFICIARY OF PROMPT PAYMENT INDEPENDENT OF THE BREACH OF THE MAIN CONTRACT AND PRECLUDES THE ISSUING BANK FROM DETERMINING WHETHER THE MAIN CONTRACT IS ACTUALLY ACCOMPLISHED OR NOT.— What must be underscored in respondent RCBC's immediate action of applying petitioner Bangayan's account to Lotec Marketing is the nature of the loan instrument used in this case - a letter of credit. In a letter of credit, the engagement of the issuing bank (respondent RCBC in this instance) is to pay the seller or beneficiary of the credit (or the adivising bank, Korean Exchange Bank, in this instance) once the draft and the required documents are presented to it. This "independence principle" in letters of credit assures the seller of the beneficiary of **prompt payment** independent of any breach of the main contract and precludes the issuing bank from determining whether the main contract is actually accomplished or not. In this case, respondent RCBC, as the issuing bank for Lotec Marketing's letter of credit had to make **prompt payment** to Korea Exchange Bank (the advising bank) when the obligation became due and demandable. Precisely because of the independence principle in letters of credit and the need for prompt payment, respondent RCBC required a Surety Agreement from petitioner Bangayan before issuing the letters of credit in favor of the four corporations, including Lotec Marketing.

10. ID.; BANK SECRECY LAW (R.A. NO. 1405); NOT VIOLATED IN CASE AT BAR.— Petitioner Bangayan argues that there was a wrongful disclosure by respondents RCBC and Philip Saria of confidential information regarding his bank accounts in violation of the Bank Secrecy Act. However,

petitioner failed to identify which confidential information respondents divulged before the BOC that would make them liable under the said law. x x x Petitioner Bangayan claims that respondent Saria divulged confidential information through the Affidavit he submitted to the BOC. However, nothing in respondent Saria's Affidavit before the BOC showed that details of petitioner Bangayan's bank accounts with respondent bank was disclosed. If at all, respondent Saria merely discussed his functions as an account officer in respondent bank and identified petitioner as the one who had guaranteed the payment or obligations of the importers under the Surety Agreement. According to petitioner Bangayan, the responses of respondent RCBC's officers in relation to the BOC's actions led to unsavory news reports that "disparaged petitioner's good character and reputation" and exposed him to "public ridicule and contempt." However, as the appellate court correctly found, the humiliation and embarrassment that petitioner Bangayan suffered in the business community was not brought about by the alleged violation of the Bank Secrecy Act; it was due to the smuggling charges filed by the Bureau of Customs which found their way in the headlines of newspapers. Both the trial and appellate courts correctly found that petitioner Bangayan did not satisfactorily introduce evidence "to substantiate his claim that defendant bank gave any classified information" in violation of the Bank Secrecy Act. Failing to adduce further evidence in the instant Petition with respect to the bank's purported disclosure of confidential information as regards his accounts, petitioner cannot be awarded any damages arising from an unsubstantiated and unproved violation of the Bank Secrecy Act.

11. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; PETITIONER'S RIGHT TO DUE PROCESS WAS NOT VIOLATED AS HE WAS GIVEN THE FREEDOM AND OPPORTUNITY TO CROSS-EXAMINE AND CONFRONT THE WITNESS' TESTIMONY.— Neither can petitioner Bangayan claim any deprivation of due process when the trial court ordered the reinstatement of Mr. Lao's testimony without any motion or prayer from respondent RCBC. The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before

administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. The right, however, has always been understood as requiring not necessarily an actual cross-examination but merely an opportunity to exercise the right to cross-examine if desired. What is proscribed by statutory norm and jurisprudential precept is the absence of the opportunity to cross-examine. In this case, petitioner Bangayan's right to due process was not violated, as he was given the freedom and opportunity to cross-examine and confront Mr. Lao on the latter's testimony. Even if respondent RCBC had not filed any motion, it was well within the court's discretion to have Mr. Lao's testimony reinstated in the "interest of substantial justice." The proceedings in the trial court in this civil case were adversarial in nature insofar as the parties, in the process of attaining justice, were made to advocate their respective positions in order to ascertain the truth. The truth-seeking function of the judicial system is best served by giving an opportunity to all parties to fully present their case, subject to procedural and evidentiary rules. Absent any blatant neglect or willfully delay, both parties should be afforded equal latitude in presenting the evidence and the testimonies of their witnesses in favor of their respective positions, as well as in testing the credibility and the veracity of the opposing party's claim through cross-examination. The Court finds no reversible error on the part of the trial court in allowing the full presentation of the reinstated testimony of respondent RCBC's lone witness, especially since the other party was afforded the occasion to cross-examine the witness and in fact availed himself of the opportunity. Although he expressly reserved his right to question the court's reinstatement of the testimony of the witness, petitioner Bangayan did not satisfactorily offer convincing arguments to overturn the trial court's order. That the court gave petitioner the opportunity to cross-examine Mr. Lao — a remedy that petitioner even fully availed himself of — negates the allegation of bias against the Judge.

12. JUDICIAL ETHICS; JUDGES; A MOTION TO INHIBIT SHALL BE DENIED IF FILED AFTER THE JUDGE HAS ALREADY GIVEN AN OPINION ON THE MERITS OF THE CASE.— The timing of petitioner Bangayan's allegations of prejudice on the part of Judge Santiago is suspect, since the

latter had already rendered a Decision unfavorable to petitioner's cause. A motion to inhibit shall be denied if filed after a member of the court has already given an opinion on the merits of the case, the rationale being that "a litigant cannot be permitted to speculate on the action of the court . . . (only to) raise on objection of this sort after the decision has been rendered." When respondent "RCBC moved for Judge Santiago's inhibition, petitioner even interposed an objection and characterized as unfounded respondent bank's charge of partiality. It is now too late in the day to suddenly accuse Judge Santiago of prejudice in the proceedings below, after he has already rendered an unfavorable judgment against petitioner. If at all, the latter's claim the Judge Santiago was biased in favoring respondent RCBC is a mere afterthought that fails to support a reversal by the Court.

APPEARANCES OF COUNSEL

Nelson Loyola for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondents.

D E C I S I O N

SERENO, *J.*:

Before this Court is a Rule 45 Petition[1] questioning the Court of Appeals' affirmance of a trial court's dismissal of a complaint for damages filed by a depositor against a bank for the dishonor of seven checks and for the wrongful disclosure of information regarding the depositor's account contrary to the Bank Secrecy Act (Republic Act No. 1405).[2]

The Facts

Petitioner Ricardo Bangayan had a savings account and a current account with one of the branches of respondent Rizal

[1] *Rollo* at 8-60.

[2] RTC Decision dated 17 October 1994 (*rollo* at 77-87) and CA Decision dated 06 August 2001 (*rollo* at 62-76).

Commercial Banking Corporation (RCBC).[3] These two accounts had an "automatic transfer" condition wherein checks issued by the depositor may be funded by any of the two accounts.[4]

On 26 June 1992, petitioner Bangayan purportedly signed a Comprehensive Surety Agreement (the Surety Agreement)[5] with respondent RCBC in favor of nine corporations.[6] Under the Surety Agreement, the funds in petitioner Bangayan's accounts with respondent RCBC would be used as security to guarantee any existing and future loan obligations, advances, credits/ increases and other obligations, including any and all expenses that these corporations may incur with respondent bank.

Petitioner Bangayan contests the veracity and due authenticity of the Surety Agreement on the ground that his signature thereon was not genuine, and that the agreement was not notarized.[7] Respondent RCBC refutes this claim, although it admitted that it was exceptional for a perfected Surety Agreement of the bank to be without a signature of the witness and to remain unnotarized. Mr. Eli Lao, respondent bank's Group Head of Account Management, however, explained that the bank was still in the process of "completing" the Surety Agreement at that time.[8]

The following are the transactions of respondent RCBC in relation to the Surety Agreement *vis-à-vis* the petitioner Bangayan.

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[3] Savings Account No. 1109-81805-0 and Current Account No. 0109-8232-5 at the RCBC Binondo Branch, 500 Quintin Paredes, St., Binondo, Manila. (*See* Amended Answer dated 12 January 1993; RTC records, Vol. 1, at 127)

[4] RTC Decision dated 17 October 1994, at 9 (*rollo* at 85); CA Decision dated 06 August 2001, at 2 (*rollo* at 63).

[5] Exhibit "1"; RTC records, Vol. 2, at 705-707.

[6] The nine corporations were: (1) **LBZ Commercial**; (2) **Peaks Manufacturing**; (3) **Final Sales Enterprises**; (4) **Lotec Marketing**; (5) Lucky M Motor Service; (6) 9M Trading; (7) WN Albos Trading Center; (8) KMT Import Trader; and (9) Silver Machine Trading. (Exhibit "1-B", *id.* at 707)

[7] Petition for Review on *Certiorari*, para. 25-27, at 44-45; *rollo* at 50-51.

[8] TSN, 16 September 1994, at 22-23.

On 26 June 1992 (the same day that the Surety Agreement was allegedly signed), two of the corporations whose performance were guaranteed therein – LBZ Commercial and Peaks Marketing – were issued separate commercial letters of credit[9] by respondent RCBC for the importation of PVC resin from Korea. Three days later or on 29 June 1992, respondent RCBC issued a third letter of credit[10] in favor of another corporation, Final Sales Enterprise, whose obligations to respondent bank were likewise secured by petitioner Bangayan under the Surety Agreement. Mr. Lao claimed that respondent bank would not have extended the letters of credit in favor of the three corporations without petitioner Bangayan acting as surety.[11]

On 26 August 1992, a fourth letter of credit[12] was issued by respondent RCBC for the importation of materials from Korea, this time by Lotec Marketing, another corporation enumerated in the Surety Agreement. The Korea Exchange Bank was designated as the advising bank for Lotec Marketing's letter of credit.[13]

On 15 September 1992, after the arrival of the shipments of the first three corporations from Korea, the Bureau of Customs (BOC) demanded – via letter of the same date – from respondent RCBC, which facilitated the three letters of credit, the remittance of import duties in the amount of thirteen million two hundred sixty-five thousand two hundred twenty-five pesos (PhP13,265,225).[14]

Mr. Lao of respondent RCBC allegedly called petitioner Bangayan and informed him of the BOC's demand for payment

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[9] Exhibits "4" and "5", RTC records, Vol. 2, at 713-716.

[10] Exhibit "3", *id.* at 711-712.

[11] TSN, 16 September 1994, at 28.

[12] Exhibit "10", RTC records, Vol. 2, at 724-725.

[13] *Id*.

[14] Exhibit "6"; *id.* at 766.

of import duties.[15] According to Mr. Lao, petitioner allegedly replied that he understood the situation and assured Mr. Lao that he was doing everything he could to solve the problem.[16]

Considering the BOC's demand, respondent RCBC decided to put on hold the funds in petitioner Bangayan's accounts by virtue of the authority given to it by petitioner under the Surety Agreement.[17] Respondent RCBC reasoned that as the collecting agent, it had to earmark sufficient funds in the account of petitioner Bangayan (the surety) to satisfy the tax obligations of the three corporations, in the event that they would fail to pay the same.[18] Thus, respondent bank refused payments drawn from petitioner Bangayan's deposits, unless there was an order from the BOC.[19] Petitioner Bangayan, however, contests this action since respondent bank did not present any writ of garnishment that would authorize the freezing of his funds.[20]

On 18 September 1992, two of the seven checks that were drawn against petitioner Bangayan's Current Account No. 0109-8232-5 were presented for payment to respondent RCBC, namely:

RCBC Check No.	Date of Presentment	Paid To	Amount
98799[21]	18 Sept 1992	United Pacific Enterprises	PhP3,650,000
938000[22]	18 Sept 1992	United Pacific Enterprises	PhP4,500,000
TOTAL			**PhP8,150,000**

[15] TSN, 04 June 1993, at 28-29.

[16] *Id.* at 29.

[17] *Id.* at 30-32. *See* Surety Agreement (Exhibit "1"); RTC records, Vol. 2 at 705.

[18] TSN, 16 September 1994, at 32.

[19] CA Decision; *rollo* at 65.

[20] Petitioner Bangayan's Memorandum dated 22 October 2002, at 19 (*rollo* at 255). *See also* TSN, 31 March 1993, at 30-31.

[21] Exhibit "F", RTC records, Vol. 1, at 184.

[22] Exhibit "E", *id.*

On the same day, the amounts of three million six hundred fifty thousand pesos (PhP3,650,000) and four million five hundred thousand pesos (PhP4,500,000)[23] were successively debited from the said current account, as shown in petitioner Bangayan's passbook for the current account.[24] Alongside these two debit entries in the passbook was the transaction reference code "DFT," which apparently stands for "debit fund transfer."[25]

On 21 September 1992, the same amounts in the two checks were credited to petitioner Bangayan's current account, under the transaction reference code "CM," that stands for "credit memo."[26] Moreover, petitioner Bangayan's Checks Nos. 93799 and 93800 issued in favor of United Pacific Enterprises were also returned by respondent RCBC with the notation "REFER TO DRAWER."[27]

On the same day that the checks were referred to petitioner Bangayan by respondent RCBC, United Pacific Enterprises, through Mr. Manuel Dente, demanded from petitioner Bangayan the payment of eight million one hundred fifty thousand pesos (PhP8,150,000), which corresponded to the amounts of the two dishonored checks that were issued to it.[28] Nothing more has been alleged by petitioner on this particular matter.

On 24 September 1992, the Korea Exchange Bank (the advising bank) informed respondent RCBC through a telex that it had already negotiated the fourth letter of credit for Lotec Marketing's shipment, which amounted to seven hundred twelve thousand eight hundred U.S. dollars (US$712,800) and, thereafter, claimed reimbursement from respondent RCBC.[29]

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[23] These amounts correspond to the first two checks (Check Nos. 937999 and 93800) that were presented on 18 September 1992.

[24] Exhibit "A-1", RTC records, Vol. 1, at 182.

[25] *Id.*

[26] *Id.*

[27] Exhibits "H" and "I", *id.* at 186.

[28] Exhibit "Q", *id.* at 203.

[29] Exhibit "11", *id.* Vol. 2, at 726.

This particular shipment by Lotec Marketing became the subject matter of an investigation conducted by the Customs Intelligence & Investigation Service of the BOC, according to respondent bank.[30] Both parties agreed that the BOC likewise conducted an investigation covering the importation of the three corporations – LBZ Commercial, Peaks Marketing and Final Sales Enterprise - that were opened through the letters of credit issued by respondent RCBC.[31]

On 09 October 1992, respondent Philip Saria, who was an Account Officer of respondent bank's Binondo Branch, signed and executed a Statement before the BOC, with the assistance of Atty. Arnel Z. Dolendo of respondent RCBC, on the bank's letters of credit issued in favor of the three corporations.[32] Petitioner Bangayan cited this incident as the basis for the allegation in the Complaint he subsequently filed that respondent RCBC had disclosed to a third party (the BOC) information concerning the identity, nature, transaction and deposits including details of transaction related to and pertaining to his deposits with the said bank, in violation of the Bank Secrecy Act.[33] It must be pointed out that the trial court found that "no evidence was introduced by (petitioner Bangayan) to substantiate his claim that (respondent RCBC) gave any classified information" in violation of the Bank Secrecy Law.[34] Thus, the trial court considered the alleged disclosure of confidential bank information by respondent RCBC as a non-issue.[35]

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[30] Respondent RCBC Pre-Trial Brief dated 03 February 1993, at 2; *id.* Vol. 1, at 208.

[31] Exhibit "P", RTC records, Vol.1, at 198-202.

[32] *Id.*

[33] Second Cause of Action, Complaint dated 05 November 1992, at 7-8 (RTC records, Vol. 1, at 7-8); CA Decision dated 06 August 2001, at 3 (*rollo* at 64).

[34] RTC Decision dated 17 October 1994, at 8; *rollo*, at 84.

[35] "On this score, plaintiff (petitioner Bangayan) has no cause of action for damages against defendant RCBC." (RTC Decision dated 17 October 1994, at 8; *id.*).

On the same date, when Lotec Marketing's loan obligation under the fourth letter of credit became due and demandable,[36] respondent RCBC issued an advice that it would debit the amount of twelve million seven hundred sixty-two thousand six hundred pesos (PhP12,762,600) from petitioner Bangayan's current account to partially satisfy the guaranteed corporation's loan.[37] At that time, petitioner Bangayan's passbook for his current account showed that it had funds of twelve million seven hundred sixty-two thousand six hundred forty-five and 64/100 pesos (PhP12,762,645.64).[38]

On 12 October 1992, the amount of twelve million seven hundred sixty-two thousand and six hundred pesos (PhP12,762,600) was debited from petitioner Bangayan's current account, consequently reducing the funds to forty-five and 64/100 pesos (PhP45.64).[39] Respondent RCBC claimed that the former amount was debited from petitioner's account to partially pay Lotec Marketing's outstanding obligation which stood at eighteen million forty-seven thousand thirty-three and 60/100 pesos (PhP18,047,033.60).[40] Lotec Marketing, thereafter, paid the balance of its obligation to respondent RCBC in the amount of five million three hundred thirty-eight thousand eight hundred nineteen and 20/100 pesos (PhP5,338,819.20)[41] under the fourth letter of credit.

On 13 October 2010, the three corporations earlier adverted to pay the corresponding customs duties demanded by the BOC.[42] Receipts were subsequently issued by the BOC for the

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[36] Import Bill dated 09 October 1992 (Exhibit "18"; RTC records, Vol. 2, at 735).

[37] Debit Advice dated 09 October 1992 (Exhibit "19"; *id.* at 736).

[38] Exhibit "A-1"; *id.*, Vol. 1, at 182.

[39] *Id.*

[40] Respondent RCBC Pre-Trial Brief dated 03 February 1993, at 2-3; *id.* at 208-209.

[41] RCBC Official Receipt dated 28 October 1992 (Exhibit "20"; *id.* Vol. 2, at 737).

[42] Exhibits "7-a", "8-a", and "9-a", *id.* at 718-723.

corporations' payments, copies of which were received by Atty. Nelson Loyola, counsel of petitioner Bangayan in this case.[43] The trial court considered this as payment by petitioner of the three corporations' obligations for custom duties.[44] Thereafter, respondent RCBC released to the corporations the necessary papers for their PVC resin shipments which were imported through the bank's letters of credit.[45]

On 15 October 2010, five other checks of petitioner Bangayan were presented for payment to respondent RCBC, namely:

RCBC Check No.	Date of Presentment	Paid To	Amount
938011[46]	15 Oct 1992	Simplex Merchandising	PhP1,200,000
938012[47]	15 Oct 1992	Simplex Merchandising	PhP1,260,000
938013[48]	15 Oct 1992	Simplex Merchandising	PhP1,180,000
938014[49]	15 Oct 1992	Hinomoto Trading Company	PhP1,052,000
938015[50]	15 Oct 1992	Hinomoto Trading Company	PhP982,000
TOTAL AMOUNT			**PhP5,674,000**

On 16 October 1992, these five checks were also dishonored by respondent RCBC on the ground that they had been drawn against insufficient funds ("DAIF") and were subsequently returned.[51]

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[43] *Id.*

[44] "It appears that these taxes were eventually funded by plaintiff sometime on October 13, 1992." (RTC Decision dated 17 October 1994, at 10; *rollo* at 86.

[45] Exhibits "7", "8", and "9", *id.*

[46] Exhibit "D"; *id.*, Vol. 1, at 183.

[47] Exhibit "C", *id.*

[48] Exhibit "B", *id.*

[49] Exhibit "I", *id.* at 187.

[50] Exhibit "J", *id.*

[51] Exhibits "G" and "K", *id.* at 185 and 187.

On 20 October 1992, Hinomoto Trading Company, one of the payees for two of the dishonored checks,[52] demanded that petitioner Bangayan make good on his payments.[53] On 21 October 1992, the other payee of the three other dishonored checks,[54] Simplex Merchandising, likewise made a final demand on petitioner to replace the dishonored instruments.[55]

On 23 October 1992, petitioner Bangayan, through counsel, demanded that respondent bank restore all the funds to his account and indemnify him for damages.[56]

On 30 October 1992, nineteen thousand four hundred twenty-seven and 15/100 pesos (PhP19,427.15) was credited in petitioner Bangayan's current account, with the transaction reference code "INT" referring to interest.[57] Petitioner explains that even if the outstanding balance at that time was reduced, this interest was earned based on the average daily balance of the account for the quarter and not just on the balance at that time, which was forty-five and 64/100 pesos (PhP45.64).[58]

The Case in the Trial Court

On 09 November 1992, petitioner Bangayan filed a complaint for damages against respondent RCBC.[59] Subsequently, respondent RCBC filed an Answer dated 02 December 1992 with compulsory counter-claims.[60] On 12 January 1993,

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[52] Check Nos. 938014 and 938015 for PhP1,052,000 and PhP982,000, respectively.

[53] Exhibit "N"; RTC records, Vol. 1, at 196.

[54] Check Nos. 938011, 938012 and 938013 for PhP1,200,000, PhP1,260,000 and PhP1,180,000, respectively.

[55] Exhibit "O"; RTC records, Vol. 1, at 197.

[56] Petitioner Bangayan's letter dated 23 October 1992 (Exhibit "L") *id.* at 24.

[57] Exhibit "A-1", *id.* at 182.

[58] TSN, 15 March 1993, at 16.

[59] Complaint dated 05 November 1992; RTC Records, Vol. 1, at 1-30.

[60] *Id.* at 79-86.

respondent RCBC filed a Motion for Leave to File Attached Amended Answer and Amended Answer.[61]

Petitioner Bangayan argues that at the time the dishonored checks were issued, there were sufficient funds in his accounts to cover them;[62] that he was informed by personnel of respondent RCBC that his accounts were garnished, but no notice or writ of garnishment was ever shown to him;[63] and that his name and reputation were tarnished because of the dishonor of checks that were issued in relation to his automotive business.[64]

In its defense, respondent RCBC claims that petitioner Bangayan signed a Surety Agreement in favor of several companies that defaulted in their payment of customs duties that resulted in the imposition of a lien over the accounts, particularly for the payment of customs duties assessed by the Bureau of Customs.[65] Respondent bank further claimed that it had funded the letter of credit[66] availed of by Lotec Marketing to finance the latter's importation with the account of petitioner Bangayan, who agreed to guarantee Lotec Marketing's obligations under the Surety Agreement; and, that respondent bank applied petitioner Bangayan's deposits to satisfy part of Lotec Marketing's obligation in the amount of twelve million seven hundred sixty-two thousand and six hundred pesos (PhP12,762,600), which resulted in the depletion of the bank accounts.[67]

Petitioner Bangayan also alleged that respondent RCBC disclosed to a third party (the BOC) classified information about the identity and nature of the transactions and deposits, in

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[61] *Id.* at 125-134.

[62] Complaint dated 05 November 1992; *id.* at 3-6.

[63] *Id.* at 6.

[64] *Id.* at 8-10.

[65] Bureau of Customs Letter dated 19 September 1992 (Exhibit "6"); *id.*, Vol. 2, at 717.

[66] Commercial Letter of Credit Application and Agreement issued on 26 August 1992 (Exhibit "10"); *id.* at 724-725.

[67] Amended Answer dated 12 January 1993; *id.*, Vol. 1, at 131-132.

violation of the Bank Secrecy Act. Respondent RCBC counters that no confidential information on petitioner's bank accounts was disclosed.

Availing himself of discovery proceedings in the lower court, petitioner Bangayan filed a Request for Admission[68] and Request for Answer to Written Interrogatories,[69] to which respondent RCBC filed the corresponding Answers and Objections to Interrogatories[70] and Response to Request for Admission.[71]

During the presentation of complainant's evidence, petitioner Bangayan, Atty. Randy Rutaquio, respondent Saria and Manuel Dantes testified in open court. Petitioner Bangayan thereafter filed a Formal Offer of Evidence.[72]

On the other hand, respondent RCBC presented Mr. Lao as its lone defense witness. Before the termination of Mr. Lao's direct examination, respondent RCBC filed a Motion to Inhibit Presiding Judge Pedro Santiago,[73] who subsequently denied the motion.[74] The Order denying the Motion to Inhibit was the subject matter of petitions filed by respondent RCBC in the Court of Appeals[75] and subsequently in this Court, which were all dismissed.

In the meantime, when respondent RCBC's witness (Mr. Lao) failed to appear at the hearing, Judge Santiago ordered

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[68] Request for Admission dated 01 December 1992; RTC records, Vol. 1, at 87-88.

[69] Request for Answer to Written Interrogatories dated 01 December 1992, *id.* at 96-100.

[70] Answers and Objections to Interrogatories dated 18 December 1992, *id.* at 104-108.

[71] Response to Request for Admission dated 16 December 1992, *id.* at 109-111.

[72] Formal Offer of Exhibits dated 01 April 1993; *id.* at 235-240.

[73] Respondent RCBC's Motion to Inhibit dated 02 July 1993, *id.* at 273-281.

[74] RTC Order dated 30 July 1993, *id.* at 300.

[75] Court of Appeals Decision dated 28 March 1994, *id.* at 489-496.

that Mr. Lao's testimony be stricken off the record despite respondent bank's motion to have the case reset.[76] After the appellate proceedings for respondent RCBC's Petition as regards the Motion to Inhibit, however, Judge Santiago set aside his earlier Order and reinstated the testimony of Mr. Lao, subject to cross-examination.[77] Petitioner Bangayan took exception to the Order reinstating Mr. Lao's testimony, but continued to conduct his cross examination with a reservation to raise the Order in the appellate courts.[78]

Respondent RCBC thereafter filed its Formal Offer of Exhibits.[79]

On 17 October 1994, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, premises above considered, **plaintiff not having proved that defendant RCBC acted wrongly, maliciously and negligently in dishonoring his 7 checks**, nor has the bank given any confidential informations against the plaintiff in violation of R.A. 1405 and the defendant bank having established on the contrary that plaintiff has **no sufficient funds for his said checks**, the instant complaint is hereby DISMISSED."[80] (Emphasis supplied)

When his omnibus motion[81] to have the Decision reconsidered was denied,[82] petitioner Bangayan filed a notice of appeal.[83]

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[76] RTC Order dated 06 August 1993, *id.* at 304.

[77] RTC Order dated 23 August 1994, *id.*, Vol. 2, at 663-664.

[78] Petitioner Bangayan's Comment dated 07 September 1994, *id.* at 694-695.

[79] Formal Offer of Exhibits dated 28 September 1994, *id.* at 746-754.

[80] RTC Decision dated 17 October 1994, at 11; *rollo*, at 37.

[81] Petitioner Bangayan's Omnibus Motion dated 04 November 1994; RTC records, Vol. 2, at 905-946.

[82] Order dated 14 December 1994, *id.* at 1040.

[83] Petitioner Bangayan's Notice of Appeal dated 28 December 1994, *id.* at 1041.

The Ruling of the Court of Appeals

After petitioner Bangayan[84] and respondent RCBC[85] filed their respective appeal briefs, the Court of Appeals affirmed the trial court's decision *in toto*.[86] The appellate court found that the dishonor of the checks by respondent RCBC was not without good reason, considering that petitioner Bangayan's account had been debited owing to his obligations as a surety in favor of several corporations. Thus, the Court Appeals found "there was no 'dishonest purpose,' or 'some moral obliquity,' or 'conscious doing of wrong,' or 'breach of a known duty,' or 'some motive or interest,' or 'ill will' that 'partakes (sic) nature of fraud' that can be attributed" to respondent RCBC.[87] It likewise ruled that petitioner Bangayan cannot raise the question as to the genuineness, authenticity and due execution of the Surety Agreement for the first time on appeal.[88]

This Decision of the appellate court is the subject of the instant Petition for Review on *Certiorari* filed by petitioner Bangayan under Rule 45 of the Rules of Court.[89]

Assignment of Errors

Petitioner Bangayan makes the following assignment of errors:

A. THE COURT OF APPEALS ACTED WITH GROSS ARBITRARINESS AND IN BLATANT VIOLATION OF THE

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[84] Petitioner Bangayan's Brief for the Plaintiff-Appellant dated 28 November 1995, CA *rollo* at 22-70.

[85] Respondent RCBC's Motion to Admit Appellee's Brief and Brief for the Appellees both dated 23 February 1996, CA *rollo* at 162-200.

[86] "WHEREFORE, premises considered, there being no reversible error, the Decision dated October 17, 1994 (Records pp. 887-897) in Civil Case No. Q-92-13949, is hereby AFFIRMED *in toto*. No Cost against Appellant." (CA Decision dated 06 August 2001; *rollo* at 62-76)

[87] CA Decision dated 06 August 2001, at 10; *rollo* at 71.

[88] *Id.* at 13; *rollo* at 74.

[89] Petitioner Bangayan's Petition for Review on *Certiorari* dated 12 September 2001, *rollo* at 8-59.

CONSTITUTIONAL RIGHTS OF THE PETITITONER TO DUE PROCESS, AND A FAIR TRIAL:

(1) WHEN IT REINSTATED THE TESTIMONY OF ELI LAO ALREADY STRICKEN OFF THE RECORDS UPON PRIOR ORDER OF THE RTC AFFIRMED BY THE COURT OFAPPEALS AND CONFIRMED BY THE SUPREME COURT;

(2) WHEN IT SANCTIONED THE CAVALIER ACT OF RESPONDENTS IN DEMEANING THE RULES ON DISCOVERY PROCEDURE;

(3) WHEN IT RENDERED A DECISION WHICH IS CONTRARY TO THE FACTS AND THE EVIDENCE PRESENTED AT THE TRIAL; and

(4) WHEN IT REFUSED TO APPLY THE LAWS SQUARELY IN POINT ON THE MATTER IN CONTROVERSY.

B. THE HONORABLE COURT OF APPEALS DECIDED THIS CASE IN A WAY NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT;

C. THERE ARE SPECIAL AND IMPORTANT REASONS THAT REQUIRE A REVIEW OF THE CA DECISION;

D. THE DECISION OF THE COURT OF APPEALS … IS NEITHER JUST NOR IN ACCORD WITH THE RULES OF LAW AND JURISPRUDENCE NOR IS IT EQUITABLE AND IT IGNORES THE PREVIOUS RULINGS OF THE SUPREME COURT IN EARLIER PRECEDENT CASES.[90]

The Issues

A. Whether respondent RCBC was justified in dishonoring the checks, and, consequently, whether petitioner Bangayan is entitled to damages arising from the dishonor.

B. Whether there was reversible error on the part of the lower court in allowing the testimony of Mr. Lao, despite its earlier Order to strike off the testimony.

C. Whether respondent RCBC violated the Bank Secrecy Act.

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[90] *Id.* at 7-8; *rollo* at 14-15.

The Ruling of the Court

Preliminarily, petitioner Bangayan raises questions of fact[91] regarding the authenticity of the Surety Agreement and the events leading up to the dishonor of the seven checks. However, petitions for review on *certiorari* under Rule 45 are limited only to pure questions of law[92] and, generally, questions of fact are not reviewable[93] since this Court is not a trier of facts.[94] Although respondent RCBC briefly treated this procedural matter,[95] the Court finds that the instant Petition is indeed subject to dismissal because the determination of questions of fact is improper in a Rule 45 proceeding.[96] In any case, even if procedural rules were to be relaxed at this instance, the substantial merits of petitioner Bangayan's cause is nonetheless insufficient to reverse the decisions of the trial and appellate courts, as will be discussed in detail below.

A. There was no malice or bad faith on the part of respondent RCBC in the dishonor of the checks, since its actions were justified by petitioner Bangayan's obligations under the Surety Agreement.

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[91] "The petitioner unto this Honorable Supreme Court respectfully appeals by way of petition for review on *certiorari* under Rule 45 of the Revised Rules of Court on questions of law, fact and errors of judgment of the Honorable Court of Appeals that sustained the decision of the RTC of Quezon City, Br. 101, in CC Q-92-13949, dismissing the case." (Petition at 7, *id.* at 14)

[92] "The petition shall raise only questions of law which must be distinctly set forth." (Rule 45, Sec. 1)

[93] "As a general rule, questions of fact are not proper in a petition filed under Rule 45." (*Adriano v. Tanco*, G.R. No. 168164, 05 July 2010)

[94] "The Court has held in a long line of cases that in a petition for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be raised as the Supreme Court is not a trier of facts." (*Republic v. Mangotara*, G.R. Nos. 170375, 170505, 173355-56, 173401, 173563-64, 178779 & 178894, 07 July 2010)

[95] Respondent RCBC's Memorandum dated 07 November 2002, at 1-2; *rollo* at 297-298.

[96] *Hacienda Bigaa v. Chavez*, G.R. No. 174160, 20 April 2010.

The Court is unconvinced by petitioner Bangayan's arguments that respondent RCBC acted with malice or bad faith in dishonoring the seven checks, which would entitle him to an award of damages.

At the heart of the controversy is the Surety Agreement that secured the obligations of the nine corporations in favor of respondent RCBC.

Petitioner Bangayan denies the genuineness, authenticity and due execution of the alleged agreement on the following grounds: (a) his signature on the document is not genuine; (b) the Surety Agreement was never notarized; and (c) the alleged accounts, being guaranteed, appear in a separate piece of paper that does not bear his signature or conformity.[97]

Both the trial and the appellate courts gave credence to the Surety Agreement, which categorically guaranteed the four corporations' obligations to respondent RCBC under the letters of credit. Petitioner Bangayan did not provide sufficient reason for the Court to reverse these findings. The evidence on record supports the conclusion arrived at by the lower court and the Court of Appeals.

First, aside from his bare allegations, petitioner Bangayan failed to establish how his signature in the Surety Agreement was forged and therefore, not genuine.

Before a private document is offered as authentic, its due execution and authenticity must be proved: (a) either by anyone who has seen the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker.[98] As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence.[99]

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[97] Petition dated 12 September 2001, para. 25, at 44; *rollo* at 50.

[98] Rules of Court, Rule 132, Sec. 20; *Spouses Dela Rama v. Spouses Papa*, G.R. No. 142309, 30 January 2009, 577 SCRA 233.

[99] *Libres v. Spouses Delos Santos*, G.R. No. 176358, 17 June 2008, 554 SCRA 642.

The burden of proof rests on the party alleging forgery.[100] Mere allegation of forgery is not evidence.[101]

Mr. Lao, witness for respondent RCBC, identified the Surety Agreement[102] as well as the genuineness of petitioner Bangayan's signature therein using petitioner's signature cards in his bank accounts.[103] The trial and the appellate courts gave due credence to the identification and authentication of the Surety Agreement made by Mr. Lao.[104]

In *Deheza-Inamarga v. Alano*,[105] the Court ruled that:

> **The question of forgery is one of fact**. It is well-settled that when supported by substantial evidence or borne out by the records, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court.
>
> It is a hornbook doctrine that the findings of fact of trial courts are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons. It is not a function of this Court to analyze and weigh evidence by the parties all over again. Our jurisdiction is limited to reviewing errors of law that might have been committed by the Court of Appeals. **Where the factual findings of the trial court are affirmed *in toto* by the Court of Appeals as in this case, there is great reason for not disturbing such findings and for regarding them as not reviewable by this Court**. (Emphasis supplied)

Furthermore, petitioner Bangayan did not adduce any evidence to support his claim of forgery, despite the opportunity to do so. Considering that there was evidence on record of his genuine signature and handwriting (the signature card and the dishonored checks themselves), nothing should have prevented petitioner

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[100] *Id.*

[101] *St. Mary's Farm, Inc., v. Prima Real Properties, Inc.*, G.R. No. 158144, 31 July 2008, 560 SCRA 704.

[102] TSN, 04 June 1993, at 6-19.

[103] Exhibit "2", RTC records, Vol. 2, at 708-710.

[104] RTC Decision dated 17 October 1994, at p. 9 (*rollo* at 85); CA Decision dated 06 August 2001, at p. 12 (*rollo* at 73).

[105] G.R. No. 171321, 18 December 2008, 574 SCRA 651.

Bangayan from submitting the Surety Agreement for examination or comparison by a handwriting expert.

Even respondent RCBC did not interpose any objection when the possibility of forwarding the signature card and Surety Agreement forwarded to the National Bureau of Investigation for examination was raised during the testimony of Mr. Lao:

ATTY. LOYOLA

> Considering the delicate nature or the significance of the signatures in the signature cards and the risk of my admitting the authenticity of a mere xerox copies [sic] and considering further that **it is our position that the surety agreement as well as specimen signatures on the signature cards must be submitted to the Court and later forwarded to the NBI, Question Document Section, for examination**, I am in no position to admit now that the machine copies in the signature cards are faithful reproduction. Accordingly, I am hoping at this stage that **the surety agreement and the signature cards be forwarded to the NBI later on for examination** and in the mean time, the questioned documents be entrusted to the custody of the Honorable Court.

ATTY. POBLADOR

> **With respect to the manifestation of counsel that the documents with the signatures should be submitted to the NBI, we have no objection,** but at this juncture, we are only asking, Your Honor, if the xerox copies are faithful reproduction of the original.[106] (Emphasis supplied)

Despite his intention to have the signatures in the Surety Agreement compared with those in the signature cards, petitioner Bangayan did not have the questioned document examined by a handwriting expert in rebuttal and simply relied on his bare allegations. There is no clear, positive and convincing evidence to show that his signature in the Surety Agreement was indeed forged. As petitioner failed to discharge his burden of demonstrating that his signature was forged, there is no reason to overturn the factual findings of the lower courts with respect to the genuineness and due execution of the Surety Agreement.

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[106] TSN, 04 June 1993 at 13-14.

Second, the mere absence of notarization does not necessarily render the Surety Agreement invalid.

Notarization of a private document converts the document into a public one, renders it admissible in court without further proof of its authenticity, and is entitled to full faith and credit upon its face.[107] However, the irregular notarization — or, for that matter, the lack of notarization — does not necessarily affect the validity of the contract reflected in the document.[108]

On its face, the Surety Agreement is not notarized, even if respondent RCBC's standard form for that agreement makes provisions for it. The non-completion of the notarization form, however, does not detract from the validity of the agreement, especially in this case where the genuineness and due authenticity of petitioner Bangayan's signature in the contract was not successfully assailed.

The failure to notarize the Surety Agreement does not invalidate petitioner Bangayan's consent to act as surety for the nine corporations' obligations to respondent RCBC. Contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present[109] and the notarization is **not** an essential requisite for the validity of a Surety Agreement.[110]

Third, that the annex of the Surety Agreement does not bear petitioner Bangayan's signature is not a sufficient ground to invalidate the main agreement altogether. As the records will bear out, the Surety Agreement enumerated the names of the corporation whose obligations petitioner Bangayan are securing.

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[107] *Herbon v. Palad*, G.R. No. 149542, 20 July 2006, 495 SCRA 544.

[108] *Camcam v. Court of Appeals*, G.R. No. 142977, 30 September 2008, 567 SCRA 151; *Gelos v. Court of Appeals*, G.R. No. 86186, 08 May 1992, 208 SCRA 608.

[109] CIVIL CODE, Art. 1356; *Mallari v. Alsol*, G.R. No. 150866, 06 March 2006, 484 SCRA 148.

[110] "[T]he lack of proper notarization does not necessarily nullify nor render the parties' transaction *void ab initio*." (*Fernandez v. House of Representatives Electoral Tribunal*, G.R. No. 187478, 21 December 2009, 608 SCRA 733)

The annex to the Surety Agreement enumerated not only the names of the corporations but their respective addresses as well.[111] The corporations enumerated in the annex correspond to the nine corporations enumerated in the main body of the Surety Agreement. Ordinarily, the name and address of the principal borrower whose obligation is sought to be assured by the surety is placed in the body of the agreement, but in this case the addresses could not all fit in the body of the document, thus, requiring that the address be written in an annex. The Surety Agreement itself noted that the principal places of business and postal addresses of the nine corporations were to be found in an "attached" document.

Fourth, petitioner Bangayan never contested the existence of the Surety Agreement prior to the filing of the Complaint. When Mr. Lao informed him of the letter from the BOC regarding the failure of the three corporations to pay the customs duties under the letters of credit, the petitioner assured respondent bank that "he is doing everything he can to solve the problem."[112] If petitioner Bangayan purportedly never signed the Surety Agreement, he would have been surprised or at least perplexed that respondent RCBC would contact him regarding the three corporations' letters of credit, when, as he claims, he never agreed to act as their surety. Instead, he acknowledged the situation and even offered to solve the predicament of these borrower corporations. In fact, Atty. Loyola, petitioner's counsel in this case, even obtained copies of the BOC receipts after the three corporations paid the customs duties for their importation under the letters of credit giving a possible interpretation that petitioner was himself answering the obligations of the three corporations for the unpaid customs duties.

It must be emphasized that petitioner Bangayan did not complain against the four corporations which had benefitted from his bank account. He claims to have no reasonable connection to these borrower corporations and denies having signed the Surety Agreement. If true, nothing should have stopped

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[111] Exhibit "1-b", RTC records, Vol. 2, at 707.

[112] TSN, 04 June 1993, at 29.

him from taking these corporations to court and demanding compensation as well as damages for their unauthorized use of his bank account. Yet, these bank accounts were put on hold and/or depleted by the letters of credit issued to the four entities. That petitioner did not include them in the present suit strengthens the finding that he had indeed consented to act as surety for those entities, and that there seems to be no arm's length relationship between petitioner and the three entities.

Whatever damage to petitioner Bangayan's interest or reputation from the dishonor of the seven checks was a consequence of his agreement to act as surety for the corporations and their failure to pay their loan obligations, advances and other expenses.

With respect to the first two dishonored checks, respondent RCBC had already put on hold petitioner Bangayan's account to answer for the customs duties being demanded from the bank by the BOC. In fact, the trial court considered the referral of these checks to petitioner Bangayan as an effort by respondent RCBC to allow its depositor an opportunity to "arrange his accounts and provide funds for his checks."[113] It likewise appeared to the appellate court that the funds in petitioner's account served as the lien of the custom duties assessed; thus, the funds cannot be considered as sufficient to cover future transactions.[114]

On the other hand, the five other checks were subsequently dishonored because petitioner Bangayan's account was by that time already depleted due to the partial payment of Lotec Marketing's loan obligation.[115] Although the lien earlier imposed on petitioner's account was lifted when the three corporations paid the customs duties,[116] the account was almost completely

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[113] RTC Decision dated 17 October 1994, at 10-11; *rollo* at 86-87.

[114] CA Decision dated 06 August 2001, at 12; *rollo* at 78.

[115] Respondent RCBC debited the amount of PhP12,762,600 from petitioner Bangayan's account to partially answer for the outstanding debt of Lotec Marketing, which totaled US$712,800 or PhP18,047,033.60.

[116] Official Receipt Entry Nos. 27076357, 2706332 and 27076341, all dated 13 October 1992 (Exhibit Nos. "7-a", "8-a", and "9-A"; RTC records, Vol. 2, at 768,770 and 772).

depleted when the funds were subsequently used to partially pay Lotec Marketing's outstanding obligation under the fourth letter of credit.[117] Respondent RCBC was compelled to fully debit the funds to satisfy the main loan obligation of Lotec Marketing, which petitioner had guaranteed in joint and several capacity.

What must be underscored in respondent RCBC's immediate action of applying petitioner Bangayan's account to the Lotec Marketing is the nature of the loan instrument used in this case – a letter of credit. In a letter of credit, the engagement of the issuing bank (respondent RCBC in this instance) is to pay the seller or beneficiary of the credit (or the advising bank, Korean Exchange Bank, in this instance) once the draft and the required documents are presented to it.[118] This "independence principle" in letters of credit assures the seller or the beneficiary of **prompt payment** independent of any breach of the main contract and precludes the issuing bank from determining whether the main contract is actually accomplished or not.[119]

In this case, respondent RCBC, as the issuing bank for Lotec Marketing's letter of credit had to make **prompt payment** to Korea Exchange Bank (the advising bank) when the obligation became due and demandable. Precisely because of the independence principle in letters of credit and the need for prompt payment,[120] respondent RCBC required a Surety Agreement from petitioner Bangayan before issuing the letters of credit in favor of the four corporations, including Lotec Marketing.

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[117] When the five checks were presented on 15 October 1992, only PhP45.64 was left in petitioner Bangayan's account, which was insufficient to finance the checks.

[118] *Transfield Philippines, Inc., v. Luzon Hydro Corporation*, G.R. No. 146717, 22 November 2004, 443 SCRA 307.

[119] *Landbank of the Philippines, v. Monet's Export and Manufacturing Corporation*, G.R. No. 161865, 10 March 2005.

[120] "[I]f the letter of credit is drawable only after the settlement of any dispute on the main contract entered into by the applicant of the said letter of credit and the beneficiary, then there would be no practical and beneficial use for letters of credit in commercial transactions." (*Landbank of the Philippines, v. Monet's Export and Manufacturing Corporation, Id.*)

Under Articles 2199[121] and 2200[122] of the Civil Code, actual or compensatory damages are those awarded in satisfaction of or in recompense for loss or injury sustained.[123] They proceed from a sense of natural justice and are designed to repair the wrong that has been done.[124]

In all seven dishonored checks, respondent RCBC properly exercised its right as a creditor under the Surety Agreement to apply the petitioner Bangayan's funds in his accounts as security for the obligations of the four corporations under the letters of credit. Thus, petitioner Bangayan cannot attribute any wrong or misconduct to respondent RCBC since there was no malice or bad faith on the part of respondent in dishonoring the checks. Any damage to petitioner arising from the dishonor of those checks was brought about, not by the bank's actions, but by the corporations that defaulted on their obligations that petitioner had guaranteed to pay. The trial and the appellate courts, therefore, committed no reversible error in disallowing the award of damages to petitioner.

B. The trial court did not commit reversible error when it reinstated the testimony of Mr. Lao and allowed petitioner Bangayan to cross-examine him.

Petitioner Bangayan also assails the lower court's order that reinstated the direct testimony of Mr. Lao, respondent RCBC's lone witness. Petitioner claims that Judge Santiago acted with partiality by reinstating Mr. Lao's testimony, because this Court in another case had already sustained the lower court's earlier

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[121] "Except as provided by law or by stipulation, one is entitled to an adequate compensation **only for such pecuniary loss suffered** by him as he has duly proved." (CIVIL CODE, Art. 2199)

[122] "Indemnification for damages shall comprehend not only the value of the loss suffered but also that of the profits which the obligee failed to obtain." (CIVIL CODE, Art. 2200)

[123] *Casiño v. Court of Appeals*, G.R. No. 133803, 16 September 2005, 470 SCRA 57.

[124] *Id.*

Order striking out the testimony. Hence, petitioner says that the judge's reinstatement of Mr. Lao's testimony was in violation of petitioner's right to due process.

Petitioner Bangayan's arguments are unmeritorious.

Discretionary power is generally exercised by trial judges in furtherance of the convenience of the courts and the litigants, the expedition of business, and in the decision of interlocutory matters on conflicting facts where one tribunal could not easily prescribe to another the appropriate rule of procedure.[125] Thus, the Court ruled:

> In its very nature, the discretionary control conferred upon the trial judge over the proceedings had before him implies the absence of any hard-and-fast rule by which it is to be exercised, and in accordance with which it may be reviewed. **But the discretion conferred upon the courts is not a willful, arbitrary, capricious and uncontrolled discretion. It is a sound, judicial discretion which should always be exercised with due regard to the rights of the parties and the demands of equity and justice**. As was said in the case of *The Styria vs. Morgan* (186 U.S., 1, 9): "The establishment of a clearly defined rule of action would be the end of discretion, and **yet discretion should not be a word for arbitrary will or inconsiderate action**." So in the case of *Goodwin vs. Prime* (92 Me., 355), it was said that "**discretion implies that in the absence of positive law or fixed rule the judge is to decide by his view of expediency or by the demands of equity and justice**."
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> There being no "positive law or fixed rule" to guide the judge in the court below in such cases, there is no "positive law or fixed rule" to guide a court of appeals in reviewing his action in the premises, and such **courts will not therefore attempt to control the exercise of discretion by the court below unless it plainly appears that there was "inconsiderate action" or the exercise of mere "arbitrary will", or in other words that his action in the premises amounted to "an abuse of discretion**." But the right of an appellate court to review judicial acts which lie in the discretion of inferior courts may properly be invoked upon a showing of a strong and clear

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[125] *Negros Oriental Planters Association, Inc., v. Presiding Judge of RTC-Negros Occidental*, G.R. No. 179878, 24 December 2008, 575 SCRA 575, citing *Luna v. Arcenas*, 34 Phil. 80 (1916).

case of abuse of power to the prejudice of the appellant, or that the ruling objected to rested on an erroneous principle of law not vested in discretion.[126] (Emphasis supplied)

Prior to a final judgment, trial courts have plenary control over the proceedings including the judgment, and in the exercise of a sound judicial discretion, may take such proper action in this regard as truth and justice may require.[127]

In the instant case, the trial court was within the exercise of its discretionary and plenary control of the proceedings when it reconsidered *motu propio* its earlier order striking out the testimony of Mr. Lao[128] and ordered it reinstated.[129] The order of the judge cannot be considered as "willful, arbitrary, capricious and uncontrolled discretion," since his action allowed respondent bank to present its case fully, especially considering that Mr. Lao was the sole witness for the defense.

Petitioner Bangayan's reliance[130] on the Decisions of the Court of Appeals (CA-G.R. SP No. 31865) and this Court (G.R. No. 115922) with respect to respondent RCBC's Petition is misplaced. Contrary to his claim, what respondent RCBC questioned in those cases was the denial by Judge Santiago of

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[126] *Negros Oriental Planters Association, Inc., v. Presiding Judge of RTC-Negros Occidental, id.*

[127] *Clorox Company v. Director of Patents*, G.R. No. L-19531, 10 August 1967, 20 SCRA 965, citing *Arnedo v. Llorente*, 18 Phil. 257 (1911).

[128] RTC Order dated 06 August 1993; RTC records, Vol.1 at 304.

[129] "Moreover, in the interests of substantial justice, this Court hereby orders the reinstatement of Mr. Eli Lao's testimony which was previously stricken off the record in view of repeated absences of said witness for cross examination. THE DEFENDANTS ARE ENJOINED TO ENSURE THE PRESENCE OF THEIR WITNESS FOR CROSS EXAMINATION ON THE SCHEDULEED HEARING. THE ABSENCE OF SAID WITNESS WHICH WILL FURTHER DELAY THE PROCEEDINGS OF THIS CASE WILL BE DEALT WITH ACCORDINGLY." (RTC Order dated 23 August 1994; RTC records, Vol. 2, at 663-664)

[130] Petition for Review on *Certiorari* dated 12 September 2001, at para. 22-23, p. 6; *rollo* at 13.

its Motion for Inhibition.[131] As respondent pointed out, its Petitions to the Court of Appeals and the Court simply prayed for the reversal of the denial of the Motion for Inhibition and did not include the Order striking out the testimony of Mr. Lao. Even the appellate court (CA-G.R. CV No. 48479) noted that "what was resolved by the High Court was the issue of Inhibition of the Judge and not the striking out of the testimony of Mr. Eli Lao."[132]

Neither can petitioner Bangayan claim any deprivation of due process when the trial court ordered the reinstatement of Mr. Lao's testimony without any motion or prayer from respondent RCBC. The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process.[133] This right, however, has always been understood as requiring not necessarily an actual cross-examination but merely an opportunity to exercise the right to cross-examine if desired.[134] What is proscribed by statutory norm and jurisprudential precept is the absence of the opportunity to cross-examine.[135]

In this case, petitioner Bangayan's right to due process was not violated, as he was given the freedom and opportunity to cross-examine and confront Mr. Lao on the latter's testimony. Even if respondent RCBC had not filed any motion, it was well within the court's discretion to have Mr. Lao's testimony reinstated in the "interest of substantial justice." The proceedings in the trial court in this civil case were adversarial in nature insofar as the parties, in the process of attaining justice, were made to advocate their respective positions in order to ascertain the

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[131] RTC Order dated 30 July 1993; RTC records, Vol. 1, at 300.

[132] CA Decision dated 06 August 2001, at 11; *rollo* at 72.

[133] *Vertudes v. Buenaflor*, G.R. No. 153166, 16 December 2005, 478 SCRA 210.

[134] *People v. Escote, Jr.*, G.R. No. 140756, 04 April 2003, 400 SCRA 603.

[135] *People v. Escote, Jr., id.*

truth.[136] The truth-seeking function of the judicial system is best served by giving an opportunity to all parties to fully present their case, subject to procedural and evidentiary rules. Absent any blatant neglect or willful delay, both parties should be afforded equal latitude in presenting the evidence and the testimonies of their witnesses in favor of their respective positions, as well as in testing the credibility and the veracity of the opposing party's claims through cross-examination.

The Court finds no reversible error on the part of the trial court in allowing the full presentation of the reinstated testimony of respondent RCBC's lone witness, especially since the other party was afforded the occasion to cross-examine the witness and in fact availed himself of the opportunity. Although he expressly reserved his right to question the court's reinstatement of the testimony of the witness, petitioner Bangayan did not satisfactorily offer convincing arguments to overturn the trial court's order. That the court gave petitioner the opportunity to cross-examine Mr. Lao – a remedy that petitioner even fully availed himself of – negates the allegation of bias against the Judge.

The timing of petitioner Bangayan's allegations of prejudice on the part of Judge Santiago is suspect, since the latter had already rendered a Decision unfavorable to petitioner's cause.

A motion to inhibit shall be denied if filed after a member of the court has already given an opinion on the merits of the case, the rationale being that "a litigant cannot be permitted to speculate on the action of the court . . . (only to) raise an objection of this sort after the decision has been rendered."[137]

When respondent RCBC moved for Judge Santiago's inhibition, petitioner even interposed an objection and characterized as

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[136] "While our litigation is adversarial in nature, its purpose is always to ascertain the truth for justice is not justice unless predicated on truth." (*People v. Hernandez*, G.R. No. 117624, 04 December 1997, 282 SCRA 387)

[137] *Pasricha v. Don Luis Dison Realty, Inc*., G.R. No. 136409, 14 March 2008, 548 SCRA 273.

unfounded respondent bank's charge of partiality.[138] It is now too late in the day to suddenly accuse Judge Santiago of prejudice in the proceedings below, after he has already rendered an unfavorable judgment against petitioner. If at all, the latter's claim that Judge Santiago was biased in favoring respondent RCBC is a mere afterthought that fails to support a reversal by the Court.

C. Respondent RCBC did not violate the Bank Secrecy Act.

The Court affirms the trial court's findings which were likewise concurred with by the Court of Appeals that the alleged violation of the Bank Secrecy Act was not substantiated:

> The Customs's investigation with a subpoena/*duces tecum* sent to witness Mr. Lao on the three companies, Final Sales Enterprises, Peak Marketing and LBZ Commercial, guaranteed by plaintiff naturally raised an alarm. Mr. Lao was asked to bring documents on the questioned importations. The witness denied having given any statement in connection therewith. No evidence was introduced by plaintiff to substantiate his claim that defendant bank gave any classified information in violation of Republic Act No. 1405. On this score, plaintiff has no cause of action for damages against said defendant RCBC.[139]

In his Memorandum, petitioner Bangayan argues that there was a wrongful disclosure by respondents RCBC and Philip Saria of confidential information regarding his bank accounts in violation of the Bank Secrecy Act.[140] However, petitioner failed to identify which confidential information respondents divulged before the BOC that would make them liable under the said law.

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[138] Opposition to the Motion for Inhibition dated 13 July 1993; RTC records, Vol. 1, at 287-292.

[139] RTC Decision dated 17 October 1994, at 8 (*rollo* at 84); *see also* CA Decision dated 06 August 2001, at 14 (*rollo* at 75).

[140] Petitioner Bangayan's Memorandum dated 22 October 2002 at para. 9-13, 45-46; *rollo* at 281-282.

Section 2 of the Bank Secrecy Act provides:

> All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

Petitioner Bangayan claims that respondent Saria divulged confidential information through the Affidavit he submitted to the BOC.[141] However, nothing in respondent Saria's Affidavit before the BOC showed that details of petitioner Bangayan's bank accounts with respondent bank was disclosed. If at all, respondent Saria merely discussed his functions as an account officer in respondent bank and identified petitioner as the one who had guaranteed the payment or obligations of the importers under the Surety Agreement.

According to petitioner Bangayan, the responses of respondent RCBC's officers in relation to the BOC's actions led to unsavory news reports that "disparaged petitioner's good character and reputation" and exposed him to "public ridicule and contempt."[142] However, as the appellate court correctly found, the humiliation and embarrassment that petitioner Bangayan suffered in the business community was not brought about by the alleged violation of the Bank Secrecy Act; it was due to the smuggling charges filed by the Bureau of Customs which found their way in the headlines of newspapers.[143]

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[141] Exhibit "P", RTC records, Vol. 1, at 198-202.

[142] Petitioner Bangayan's Memorandum dated 22 October 2002, at 47; *rollo* at 283.

[143] CA Decision dated 06 August 2001, at 14; *rollo* at 75.

Both the trial and appellate courts correctly found that petitioner Bangayan did not satisfactorily introduce evidence "to substantiate his claim that defendant bank gave any classified information" in violation of the Bank Secrecy Act. Failing to adduce further evidence in the instant Petition with respect to the bank's purported disclosure of confidential information as regards his accounts, petitioner cannot be awarded any damages arising from an unsubstantiated and unproved violation of the Bank Secrecy Act.

Rules of Discovery

The Court finds that petitioner Bangayan's argument as regards the bank's purported failure to comply with the rules of discovery is not substantive enough to warrant further discussion by this Court. Petitioner has not alleged any different outcome that would be generated if we were to agree with him on this point. If petitioner is unsatisfied with respondent RCBC's responses, then his remedy is to expose the falsity (if any) of the bank's responses in the various modes of discovery during the trial proper. He could have confronted respondent with contradictory statements, testimonies or other countervailing evidence. The Court affirms the findings of the appellate court that the rules of discovery were not treated lightly by respondent RCBC.[144]

In summary, petitioner Bangayan failed to establish that the dishonor of the seven checks by respondent RCBC entitled him to damages, since the dishonor arose from his own voluntary agreement to act as surety for the four corporations' letters of credit. There was no bad faith or malice on the part of respondent bank, as it merely acted within its rights as a creditor under the Surety Agreement.

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[144] "The filing of the two pleadings by Defendants-Appellants surely belies any accusations [sic] that they took lightly the Request for Admission and Request for Answer to Interrogatories. Absent any showing that Defendants-Appellees did not file any pleadings, we see no reason why we should entertain said assigned error." (CA Decision dated 06 August 2001, at 14; *rollo* at 75)

IN VIEW OF THE FOREGOING, the instant Petition for Review on *Certiorari* filed by Ricardo B. Bangayan is *DENIED.* The Decisions of the trial court and appellate court dismissing the Complaint for damages filed by Bangayan against respondents Rizal Commercial Banking Corporation and Philip Saria are hereby *AFFIRMED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 158362. April 4, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GILBERTO VILLARICO, SR. @ "BERTING", GILBERTO VILLARICO, JR., JERRY RAMENTOS, and RICKY VILLARICO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; MURDER; POSITIVE IDENTIFICATION REFERS TO PROOF OF IDENTITY OF THE ASSAILANT.— The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for, even if the commission of the crime can be established, there can be no conviction without proof of the identity of the criminal beyond reasonable doubt. In that regard, an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force. The intervention of any mistake or the appearance of any weakness in the identification

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[*] As per Division Raffle dated 13 September 2010.

simply means that the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, thereby warranting an acquittal, even if doubt may cloud his innocence. Indeed, the presumption of innocence constitutionally guaranteed to every individual is forever of primary importance, and every conviction for crime must rest on the strength of the evidence of the State, not on the weakness of the defense.

2. ID.; ID.; THE ESTABLISHED CIRCUMSTANCES UNERRINGLY SHOW THAT THE FOUR ACCUSED WERE PERPETRATORS OF THE FATAL SHOOTING OF THE VICTIM; THEIR IDENTIFICATION BY WITNESSES WAS BEYOND REASONABLE DOUBT.— The established circumstances unerringly show that the four accused were the perpetrators of the fatal shooting of Haide. Their identification as his assailants by Remedios and Francisco was definitely positive and beyond reasonable doubt. Specifically, Remedios saw all the four accused near the door to the kitchen immediately *before* the shots were fired and recognized who they were. She even supplied the detail that Gilberto, Jr. had trained his firearm towards her once he had noticed her presence at the crime scene. On his part, Francisco attested to seeing the accused near the door to the kitchen holding their firearms *right after* he heard the gunshots, and also recognized them. The collective recollections of both Remedios and Francisco about seeing the four accused standing near the door to the kitchen immediately *before* and *after* the shooting of Haide inside the kitchen were categorical enough, and warranted no other logical inference than that the four accused were the persons who had just shot Haide. Indeed, neither Remedios nor Francisco needed to have actually seen who of the accused had fired at Haide, for it was enough that they testified that the four armed accused: (*a*) had strategically positioned themselves by the kitchen door *prior to* the shooting of Haide; (*b*) had still been in the same positions *after* the gunshots were fired; and (*c*) had continuously aimed their firearms at the kitchen door even as they were leaving the crime scene.

3. ID.; ID.; THE COLLECTIVE RELATIONSHIP OF THE WITNESSES WITH THE VICTIM AS WELL AS THEIR FAMILIARITY WITH THE ACCUSED WHO WERE THEIR

NEIGHBORS ASSURED THEIR CERTAINTY OF THEIR IDENTIFICATION AS THE VICTIM'S ASSAILANTS.— The close relationship of Remedios and Francisco with the victim as well as their familiarity with the accused who were their neighbors assured the certainty of their identification as Haide's assailants. In *Marturillas v. People*, the Court observed that the familiarity of the witness with the assailant erased any doubt that the witness could have erred; and noted that a witness related to the victim had a natural tendency to remember the faces of the person involved in the attack on the victim, because relatives, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor before the law.

4. ID.; ID.; THERE IS NO NEED FOR A SURNAME TO BE ATTACHED TO THE NICKNAME "BERTING" IN ORDER TO INSULATE THE IDENTIFICATION BY THE VICTIM FROM CHALLENGE; THE PIECES OF IDENTIFICATION EVIDENCE, INCLUDING THE VICTIM'S *RES GESTAE* STATEMENT COLLABORATED TO RENDER THEIR IDENTIFICATION UNASSAILABLE.— We hold that there was no need for a surname to be attached to the nickname Berting in order to insulate the identification by Haide from challenge. The victim's *res gestae* statement was only one of the competent and reliable pieces of identification evidence. As already shown, the accused were competently incriminated also by Remedios and Francisco in a manner that warranted the logical inference that they, *and no others*, were the assailants. Also, that Berting was the natural nickname for a person whose given name was Gilberto, like herein accused Gilberto, Sr. and Gilberto, Jr., was a matter of common knowledge in the Philippines. In fine, the pieces of identification evidence, including Haide's *res gestae* statement, collaborated to render their identification unassailable.

5. ID.; ID.; THE IDENTIFICATION OF A MALEFACTOR, TO BE POSITIVE AND SUFFICIENT FOR CONVICTION, DOES NOT ALWAYS REQUIRE DIRECT EVIDENCE FROM AN EYEWITNESS, OTHERWISE, NO CONVICTION WILL BE POSSIBLE IN CRIMES WHERE THERE ARE NO EYEWITNESSES.— The Court has distinguished two types of positive identification in *People v. Gallarde*, namely: (*a*) that by direct evidence, through an eyewitness to the very

commission of the act; and (*b*) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. x x x To conclude, the identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS IN THE MODE OF ATTACK, NOT IN THE RELATIVE POSITION OF THE VICTIM AND THE ASSAILANT.— There is treachery when: (*a*) at the time of the attack, the victim was not in a position to defend himself; and (*b*) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The essence of treachery lies in the suddenness of the attack that leaves the victim unable to defend himself, thereby ensuring the commission of the offense. It is the suddenness of the attack coupled with the inability of the victim to defend himself or to retaliate that brings about treachery; consequently, treachery may still be appreciated even if the victim was facing the assailant. Here, the elements of treachery were present. His assailants gunned Haide down while he was preoccupied in the kitchen of his own abode with getting dinner ready for the household. He was absolutely unaware of the imminent deadly assault from outside the kitchen, and was for that reason in no position to defend himself or to repel his assailants.

7. ID.; ID.; ID.; THE FOUR ACCUSED DELIBERATELY AND STRATEGICALLY POSITIONED THEMSELVES TO ENSURE THE ACCOMPLISHMENT OF THEIR DESIGN TO KILL THE VICTIM WITHOUT ANY POSSIBILITY OF ESCAPE OR ANY RETALIATION FROM HIM.— Francisco saw the four accused in the same positions that Remedios had seen them moments prior to the shooting. He claimed that they were aiming their firearms at the kitchen and continued aiming their firearms even as they were leaving the crime scene. x x x The testimonies of Remedios and Francisco on how and

where the four accused had deliberately and strategically positioned themselves could not but reveal their deliberate design to thereby ensure the accomplishment of their design to kill Haide without any possibility of his escape or of any retaliation from him. Aptly did the CA observe: A perusal of the information shows that treachery was properly alleged to qualify the killing of Heide [sic] Cagatan to murder. The prosecution was likewise able to prove treachery through the element of surprise rendering the victim unable to defend himself. In this case, the evidence shows that the victim, who was in the kitchen preparing dinner, could be seen from the outside through the holes of the wall. The witnesses consistently described the kitchen's wall as three feet high bamboo splits (sa-sa), accented with bamboo splits woven to look like a chessboard with 4-inch holes in between. The accused-appellants, likewise, positioned themselves outside the kitchen door at night where the victim could not see them. When the accused-appellants shot him, he was caught unaware.

8. ID.; MURDER; CIVIL LIABILITY; A DEATH INDEMNITY IS SEPARATE FROM MORAL DAMAGES AND EXEMPLARY DAMAGES IN CASE OF DEATH DUE TO CRIME WHEN THERE IS AT LEAST ONE AGGRAVATING CIRCUMSTANCE.— There is no question that the CA justly pronounced all the four accused guilty beyond reasonable doubt of murder, and punished them with *reclusion perpetua* pursuant to Article 248 of the *Revised Penal Code*, in relation to Article 63, paragraph 2, of the *Revised Penal Code*, considering the absence of any generic aggravating circumstance. However, the CA did not explain why it did not review and revise the grant by the RTC of civil liability in the amount of *only* ₱50,000.00. Thereby, the CA committed a plainly reversible error for ignoring existing laws, like Article 2206 of the *Civil Code*, which prescribes a death indemnity separately from moral damages, and Article 2230 of the *Civil Code*, which requires exemplary damages in case of death due to crime when there is at least one aggravating circumstance; and applicable jurisprudence, specifically, *People v. Gutierrez*, where we held that moral damages should be awarded to the heirs without need of proof or pleading in view of the violent death of the victim, and *People v.Catubig*, where we ruled that exemplary damages were warranted whenever the crime was attended by

an aggravating circumstance, whether qualifying or ordinary. Here, the aggravating circumstance of treachery, albeit attendant or qualifying in its effect, justified the grant of exemplary damages.

9. ID.; ID.; THE COURT REMINDED AND EXHORTED ALL TRIAL AND APPELLATE COURTS TO BE ALWAYS MINDFUL OF AND TO APPLY THE PERTINENT LAWS AND JURISPRUDENCE ON KINDS AND AMOUNTS OF INDEMNITIES AND DAMAGES APPROPRIATE IN CRIMINAL CASES LEST OVERSIGHT AND OMISSION WILL UNDULY ADD THE SUFFERINGS OF THE VICTIMS OR THEIR HEIRS.— Plain oversight might have caused both the RTC and the CA to lapse into the serious omissions. Nonetheless, a rectification should now be made, for, indeed, gross omissions, intended or not, should be eschewed. It is timely, therefore, to remind and to exhort all the trial and appellate courts to be always mindful of and to apply the pertinent laws and jurisprudence on the kinds and amounts of indemnities and damages appropriate in criminal cases lest oversight and omission will unduly add to the sufferings of the victims or their heirs. Nor should the absence of specific assignment of error thereon inhibit the *sua sponte* rectification of the omissions, for the grant of *all* the proper kinds and amounts of civil liability to the victim or his heirs is a matter of law and judicial policy not dependent upon or controlled by an assignment of error. An appellate tribunal has a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned, for technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. Indeed, the trend in modern day procedure is to accord broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for resolution that the parties failed to raise or that the lower court ignored.

10. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; THE CONCERTED ACTS OF THE FOUR APPELLANTS MANIFESTED THEIR AGREEMENT TO KILL THE VICTIM.— In the face of the positive identification of all the four accused, it did not matter whether only one or two of them had *actually* fired the fatal shots. Their actions indicated that a conspiracy existed among

them. Indeed, a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of a previous agreement among the accused to commit the crime is not necessary, for conspiracy may be inferred from the conduct of the accused at the time of their commission of the crime that evinces a common understanding among them on perpetrating the crime. Thus, the concerted acts of the four manifested their agreement to kill Haide, resulting in each of them being guilty of the crime regardless of whether he actually fired at the victim or not. It is axiomatic that once conspiracy is established, the act of one is the act of all; and that all the conspirators are then liable as co-principals.

11. REMEDIAL LAW; EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; PARTS OF THE *RES GESTAE*; THE STATEMENT OF THE VICTIM TO HIS MOTHER THAT HE HAD JUST BEEN SHOT BY THE GROUP OF APPELLANT GILBERTO VILLARICO, SR. @ BERTING, UTTERED IN THE IMMEDIATE AFTERMATH OF THE SHOOTING WHERE HE WAS THE VICTIM WAS A TRUE PART OF THE *RES GESTAE*.— The statement of Haide to his mother that he had just been shot by the *group* of Berting – *uttered in the immediate aftermath of the shooting where he was the victim* – was a true part of the *res gestae*. The statement was admissible against the accused as an exception to the hearsay rule under Section 42, Rule 130 of the *Rules of Court*. x x x The term *res gestae* refers to "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." In a general way, *res gestae* includes the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and which are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. The rule on *res gestae* encompasses the exclamations and statements made by either the participants, *victims*, or spectators to a crime immediately *before*, *during*, or *immediately* after the commission of the crime when the circumstances are such that the statements were made as a *spontaneous* reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.

12. ID.; ID.; ID.; ID.; REQUISITES BEFORE A DECLARATION OR AN UTTERANCE IS DEEMED AS PART OF THE *RES GESTAE*; OBTAINING IN CASE AT BAR.— The test of admissibility of evidence as a part of the *res gestae* is whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded a part of the principal fact or event itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony. A declaration or an utterance is thus deemed as part of the *res gestae* that is admissible in evidence as an exception to the hearsay rule when the following requisites concur: (*a*) the principal act, the *res gestae*, is a startling occurrence; (*b*) the statements were made before the declarant had time to contrive or devise; and (*c*) the statements must concern the occurrence in question and its immediately attending circumstances. We find that the requisites concurred herein. Firstly, the principal act – the shooting of Haide – was a startling occurrence. Secondly, his statement to his mother about being shot by the group of Berting was made *before* Haide had time to contrive or to devise considering that it was uttered *immediately after* the shooting. And, thirdly, the statement directly concerned the startling occurrence itself and its attending circumstance (that is, the identities of the assailants). Verily, the statement was reliable as part of the *res gestae* for being uttered *in spontaneity and only in reaction to the startling occurrence*.

13. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; CANNOT OVERCOME POSITIVE IDENTIFICATION BY CREDIBLE WITNESSES WHOSE MOTIVES WERE NOT SHOWN TO BE ILL OR VILE.— The rejection was warranted. Long judicial experience instructs that their denial and alibis, being too easy to invent, could not overcome their positive identification by credible Prosecution witnesses whose motives for the identification were not shown to be ill or vile. Truly, a positive identification that is categorical, consistent, and devoid of any showing of ill or vile motive on the part of the Prosecution witnesses always prevails over alibi and denial that are in the nature of negative and self-serving evidence. To be accepted, the denial and alibi must be substantiated by clear and convincing evidence establishing not only that the accused did not take part in the commission of the imputed criminal act but also

that it was physically impossible for the accused to be at or near the place of the commission of the act at or about the time of its commission. In addition, their proffered alibis were really unworthy of credit because only the accused themselves and their relatives and other intimates substantiated them.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The identification of the accused as the person responsible for the imputed crime is the primary duty of the State in every criminal prosecution. Such identification, to be positive, need not always be by direct evidence from an eyewitness, for reliable circumstantial evidence can equally confirm it as to overcome the constitutionally presumed innocence of the accused.

On appeal by the accused is the decision of the Court of Appeals (CA) promulgated on June 6, 2003,[1] finding Gilberto Villarico, Sr., Gilberto Villarico, Jr., Jerry Ramentos,[2] and Ricky Villarico guilty of murder for the killing of Haide Cagatan, and imposing the penalty of *reclusion perpetua* on each of them, thereby modifying the decision of the Regional Trial Court (RTC), Branch 16, in Tangub City that had pronounced them guilty of homicide aggravated by dwelling.[3]

With treachery having attended the killing, we affirm the CA but correct the civil liability to accord with pertinent law and jurisprudence.

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[1] CA *Rollo*, pp. 173-184; penned by Associate Justice Hakim S. Abdulwahid, and concurred by Associate Justice Bennie Adefuin-Dela Cruz (retired) and Jose I. Sabio, Jr. (retired).

[2] At times spelled as Ramientos in the records and in the RTC decision.

[3] *Rollo*, pp. 45-69; penned by Judge Resurrection T. Inting.

Antecedents

On October 7, 1999, an information for murder was filed in the Regional Trial Court in Misamis Occidental (RTC) against all the accused,[4] the accusatory portion of which reads:

> That on or about August 8, 1999, at about 7:50 o'clock in the morning at Barangay Bolinsong, Municipality of Bonifacio, Province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, armed with a short firearms (sic), did then and there willfully, unlawfully, feloniously suddenly and treacherously shoot HAIDE CAGATAN at the back penetrating through the neck which cause(d) the instant death of said victim and that he had no chance to avoid or defend himself from the attack.
>
> CONTRARY TO LAW.

All the accused pleaded *not guilty* at their December 15, 1999 arraignment.

Version of the Prosecution

At around 7:50 p.m. on August 8, 1999, Haide was busy preparing dinner in the kitchen of his family's residence in Bolinsong, Bonifacio, Misamis Occidental. The kitchen, located at the rear of the residence, had a wall whose upper portion was made of three-feet high bamboo slats (*sa-sa*) and whose lower portion was also made of bamboo slats arranged like a chessboard with four-inch gaps in between. At that time, Haide's sister-in-law Remedios Cagatan was attending to her child who was answering the call of nature near the toilet. From where she was, Remedios saw all the accused as they stood at the rear of the kitchen aiming their firearms at the door – Ricky Villarico was at the left side, and Gilberto, Jr. stood behind him, while Gilberto, Sr. was at the right side, with Ramentos behind him. When Gilberto, Jr. noticed Remedios, he pointed his gun at her, prompting Remedios to drop to the ground and to shout to Lolita Cagatan, her mother-in-law and Haide's mother:

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[4] Records, pp. 1-2.

Nay, Nay tawo Nay (Mother, mother, there are people outside, mother). At that instant, Remedios heard three gunshots.[5]

Francisco Cagatan, the father of Haide, also heard the gunshots just as he was coming out of the toilet, making him instinctively jump into a hole, from where he was able to see and recognize Gilberto, Sr., Gilberto, Jr. and Ricky who were then standing by the kitchen door. They were aiming their guns upward, and soon after left together with Ramentos.[6]

Lolita also heard the gunshots while she was in the *sala.* She recalled that Haide then came towards her from the kitchen, asking for help and saying: *Tabang kay gipusil ko ni Berting* (I was shot by Berting).[7] At that, she and Remedios brought the wounded Haide to Clinica Ozarraga, where he was treated for gunshot wounds on his left scapular region (back of left shoulder) and right elbow. He succumbed shortly thereafter due to hypovolemic shock or massive loss of blood.[8]

Version of the Defense

The accused denied the accusations and each proffered an alibi.

Gilberto, Sr. claimed that he was sleeping in his home with a fever when he heard a gunshot. He insisted that he learned that Haide had been shot only in the next morning.[9] His denial and alibi were corroborated by his wife Carmelita[10] and his daughter Jersel.[11]

Gilberto, Jr. testified that on the day of the incident, he went to Liloan, Bonifacio, Misamis Occidental at around 5:00 p.m.

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[5] TSN, March 29, 2000, pp. 5-6.

[6] TSN, March 10, 2000, pp. 6-7.

[7] TSN, February 24, 2000, pp. 19 and 24.

[8] See Exhibits A and B for the Prosecution (Records, pp. 53-54).

[9] TSN, May 31, 2000, pp. 4-5.

[10] TSN, July 21, 2000, pp. 3-17.

[11] TSN, April 11, 2000, pp. 43-58.

to visit his girlfriend together with Charlie Bacus and Randy Hernan. They stayed there until 9:00 p.m. Thereafter, they proceeded to Tiaman to attend the wake for one Helen Oligario Cuizon, and were there for an hour. They then returned to Bolinsong and spent the night in the house of Randy. It was only in the morning that Randy's father informed them that Haide had been shot.[12]

Ricky declared that he stayed throughout the whole evening of August 8, 1999 in the house of his aunt Flordeliza.[13] Myrna Hernan, a neighbor of Flordeliza, corroborated his testimony.[14]

Ramentos alleged that he was drinking *tuba* with others at the store owned by Cinderella Bacus at the time of the shooting; and that he went home at around 9:00 p.m. after his group was done drinking. He did not recall hearing any gunshots while drinking and came to know of the shooting only from a certain Anecito Duyag on the following morning.

To discredit the testimony about Haide being able to identify his assailants, the Defense presented Peter Ponggos, who narrated that he had been on board a motorcycle (*habal-habal*) when Lolita and Remedios asked for his help; and that he then aided Lolita and Remedios in bringing Haide to the hospital. According to Peter, he asked Haide who had shot him, but Haide replied that there had been only one assailant whom he did not recognize.[15]

Ruling of the RTC

After trial, the RTC convicted the four accused of homicide aggravated by dwelling, disposing:[16]

WHEREFORE, premises considered, the Court finds all the accused guilty beyond reasonable doubt of the crime of Homicide,

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[12] TSN, May 31, 2000, pp. 14-15.

[13] TSN, June 29, 2000, pp. 4-5.

[14] TSN, April 4, 2000, pp. 45-57.

[15] TSN, April 4, 2000, pp. 3-17.

[16] Records, p. 138.

with one aggravating circumstance of dwelling, and applying the Indeterminate Sentence Law, hereby sentences each one of them to a penalty of imprisonment ranging from 6 years and 1 day, as its minimum to 17 years, 4 months and 1 day, as its maximum, to suffer the accessory penalties provided for by law, to pay jointly and solidarily, the heirs of the victim ₱50,000.00, as civil liability and to pay the costs.

Let all the accused be credited of the time that they were placed in jail under preventive imprisonment, applying the provisions of Art. 29 of the Revised Penal Code, as amended.

SO ORDERED.

The RTC accorded faith to the positive identification of the accused by the Prosecution's witnesses, and disbelieved their denial and alibis due to their failure to show the physical improbability for them to be at the crime scene, for the distances between the crime scene and the places where the accused allegedly were at the time of the commission of the crime were shown to range from only 100 to 700 meters.[17] The RTC found, however, that the Prosecution was not able to prove treachery because:

xxx The medical report of "gunshot wound left scapular region" which the doctor interpreted to be at the back of the left shoulder is not sufficient to prove treachery, it being susceptible to 2 different interpretations: one: that victim had his back towards his assailants, and two: that he was actually facing them but he turned around for cover upon seeing the armed "group of Berting". The Court is inclined to believe the second interpretation because the victim was able to see and identify his assailants. Two prosecution witnesses testified that the victim identified to them who shot him.[18]

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[17] The distance between the house of Gilberto, Sr. and Haide's house was only 100 meters (TSN, May 31, 2000, p. 21). Gilbert, Jr. testified that his girlfriend's house was only 500 meters away from Bolinsong (TSN, May 31, 2000, pp. 19-21). Ricky claimed that the house of his aunt was only 700 meters from Haide's house (TSN, June 29, 2000, p. 9).

[18] Records, p. 137.

Ruling of the CA

On intermediate review, the CA modified the RTC's decision, holding instead that murder was established beyond reasonable doubt because the killing was attended by treachery, *viz*:[19]

WHEREFORE, the appealed Decision is hereby MODIFIED. Pursuant to Section 13, paragraph 2 of Rule 124 of the Rules of Criminal Procedure, We render JUDGMENT without entering it, as follows:

1. We find all accused guilty beyond reasonable doubt of MURDER. Each accused is hereby SENTENCED TO SUFFER the penalty of *reclusion perpetua.*

2. The Division Clerk of Court is hereby directed to CERTIFY and ELEVATE the entire records of this case to the Supreme Court for review.

SO ORDERED.[20]

Citing *People v. Valdez,*[21] the CA explained that the attendance of treachery did not depend on the position of the victim at the time of the attack, for the essence of treachery was in the element of surprise the assailants purposely adopted to ensure that the victim would not be able to defend himself. Considering that the accused had purposely positioned themselves at night outside

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[19] CA *Rollo*, pp. 173-184.

[20] *Id.,* p. 183.

[21] G.R. No. 127663, March 11, 1999, 304 SCRA 611, where the Court pointed out:

Under paragraph 16, Article 14 of the Revised Penal Code, the qualifying circumstance of treachery is present when the offender employs means, methods, or forms in the execution of the crime which tend directly and especially to ensure its execution without risk to himself arising from any defensive or retaliatory act which the victim might make (*People vs. Santos,* 270 SCRA 650 [1997]). **The settled rule is that treachery can exist even if the attack is frontal if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself against such attack. What is decisive is that the execution of the attack, without slightest provocation from the victim who is unarmed, made it impossible for the victim to defend himself or to retaliate** (*People vs. Javier,* 269 SCRA 181 [1997]).

the door to the kitchen from where they could see Haide, who was then busy preparing dinner, through the holes of the kitchen wall, the CA concluded that Haide was thus left unaware of the impending assault against him.

Issues

In this recourse, the accused raise the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF MURDER DESPITE FAILURE OF THE PROSECUTION TO PROVE THE IDENTITY OF THE ASSAILANT AS WELL AS ACCUSED-APPELLANTS' GUILT BEYOND REASONABLE DOUBT.

II

THE COURT OF APPEALS GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF TREACHERY, ON THE ASSUMPTION THAT INDEED ACCUSED-APPELLANTS ARE GUILTY.

The accused contend that the Prosecution witnesses failed to positively identify them as the persons who had actually shot Haide; that treachery was not attendant because there was no proof showing that they had consciously and deliberately adopted the mode of attacking the victim; and that assuming that they committed the killing, they could only be convicted of homicide.

The decisive queries are, therefore, the following:

(*a*) Should an identification, to be positive, have to be made by a witness who actually saw the assailants?

(*b*) Was treachery attendant in the killing of Haide as to qualify the crime as murder?

Ruling

We affirm the finding of guilt for the crime of murder, but modify the civil liability.

1.
Positive identification refers to proof of identity of the assailant

The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for, even if the commission of the crime can be established, there can be no conviction without proof of the identity of the criminal beyond reasonable doubt.[22] In that regard, an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force.[23] The intervention of any mistake or the appearance of any weakness in the identification simply means that the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, thereby warranting an acquittal,[24] even if doubt may cloud his innocence.[25] Indeed, the presumption of innocence constitutionally guaranteed to every individual is forever of primary importance, and every conviction for crime must rest on the strength of the evidence of the State, not on the weakness of the defense.[26]

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[22] *People v. Pineda*, G.R. No. 141644, May 27, 2004, 429 SCRA 478; *People v. Esmale*, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578.

[23] *People v. Fronda,* G.R. No. 130602. March 15, 2000, 328 SCRA 185; *Natividad v. Court of Appeals*, G.R. No. L-40233, June 25, 1980, 98 SCRA 335, 346; *People v. Beltran*, L-31860, November 29, 1974, 61 SCRA 246, 250; *People v. Manambit*, G.R. Nos. 72744-45, April 18, 1997, 271 SCRA 344, 377; *People v. Maongco*, G.R. Nos. 108963-65, March 1, 1994, 230 SCRA 562, 575.

[24] *People v. Raquel,* G.R. No. 119005, December 2, 1996; 265 SCRA 248, 259; *People v. Salguero,* G.R. No. 89117, June 19, 1991, 198 SCRA 357; *Natividad v. Court of Appeals,* G.R. No. L-40233, June 25, 1980, 98 SCRA 335, 346.

[25] *Pecho v. People*, G.R. No. 111399, September 27, 1996, 262 SCRA 518, 533; *Perez v. Sandiganbayan*, G.R. Nos. 76203-04, December 6, 1989, 180 SCRA 9; *People v. Sadie*, No. L-66907, April 14, 1987, 149 SCRA 240; *U.S. v. Gutierrez,* 4 Phil. 493 (1905).

[26] *People v. Pidia*, G.R. No. 112264, November 10, 1995, 249 SCRA 687, 702.

The accused contend that the Prosecution witnesses did not actually see who had shot Haide; hence, their identification as the malefactors was not positively and credibly made.

We cannot uphold the contention of the accused.

The established circumstances unerringly show that the four accused were the perpetrators of the fatal shooting of Haide. Their identification as his assailants by Remedios and Francisco was definitely positive and beyond reasonable doubt. Specifically, Remedios saw all the four accused near the door to the kitchen immediately *before* the shots were fired and recognized who they were. She even supplied the detail that Gilberto, Jr. had trained his firearm towards her once he had noticed her presence at the crime scene. On his part, Francisco attested to seeing the accused near the door to the kitchen holding their firearms *right after* he heard the gunshots, and also recognized them.

The collective recollections of both Remedios and Francisco about seeing the four accused standing near the door to the kitchen immediately *before* and *after* the shooting of Haide inside the kitchen were categorical enough, and warranted no other logical inference than that the four accused were the persons who had just shot Haide. Indeed, neither Remedios nor Francisco needed to have actually seen who of the accused had fired at Haide, for it was enough that they testified that the four armed accused: (*a*) had strategically positioned themselves by the kitchen door *prior to* the shooting of Haide; (*b*) had still been in the same positions *after* the gunshots were fired; and (*c*) had continuously aimed their firearms at the kitchen door even as they were leaving the crime scene.

The close relationship of Remedios and Francisco with the victim as well as their familiarity with the accused who were their neighbors assured the certainty of their identification as Haide's assailants. In *Marturillas v. People*,[27] the Court observed that the familiarity of the witness with the assailant erased any doubt that the witness could have erred; and noted that a witness related to the victim had a natural tendency to remember the

[27] G.R. No. 163217, April 18, 2006, 487 SCRA 273.

faces of the person involved in the attack on the victim, because relatives, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor before the law.[28]

Moreover, the following portions of Lolita's testimony show that Haide himself recognized and identified his assailants, to wit:

Atty. Fernandez:

Q. And where were you at that time when he was shot?

A. In the sala.

Q. Could you possibly tell the Honorable Court what actually took place when your son was shot?

A. **He came from the kitchen at that time when I heard gunreports, he said "Nay" help me because I was shot by Berting**.[29]

x x x x x x x x x

Atty. Anonat:

Q. And that affidavit was executed by you at the Bonifacio Police Station?

A. Yes.

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[28] *Id.*, p. 301; see also *People v. Evangelista*, G.R. No. 84332-33, May 8, 1996, 256 SCRA 611 (holding that where the identification made by the wife of the victim was held to be reliable because she had known the accused for a long time and was familiar with him, considering her being positive that it was the accused who had shot her husband although she saw only the back part and the body contour of the assailant. At the time she saw him, the accused was only four meters away, and there was sufficient illumination from a lamp post six meters away from the house of the victim and his wife); *People v. Jacolo*, G.R. No. 94470, December 16, 1992, 216 SCRA 631 (holding that where the conditions of visibility were favorable and the witness did not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should normally be accepted, more so where the witnesses were the victims, or near-relatives of the victims, because these people usually strove to remember the faces of the assailants).

[29] TSN, February 24, 2000, p. 19; bold emphasis supplied.

x x x x x x x x x

Q. And you affirm to the truth of what you have stated in this affidavit?

A. Yes.

Q. On question No. 7 you were asked in this manner – ***"Giunsa man nimo pagkasayod nga sila maoy responsible sa kamatayon sa imong anak?*** **How do you know that they were responsible (for) the death of your son? And your answer is this "*Tungod kay ang biktima nakasulti pa man sa wala pa siya namatay ug ang iyang pulong mao nga TABANG NAY KAY GIPUSIL KO NILA NI BERTING ug nasayod ako nga sila gumikan sa akong mga testigos.*" which translated into English – Because the victim was able to talk before he died and the words which he told me help me *Nay* I am shot by the group of Berting and I know this because of my witnesses**.[30]

x x x x x x x x x

The statement of Haide to his mother that he had just been shot by the *group* of Berting – *uttered in the immediate aftermath of the shooting where he was the victim* – was a true part of the *res gestae*. The statement was admissible against the accused as an exception to the hearsay rule under Section 42, Rule 130 of the *Rules of Court,* which provides:

Section 42. *Part of the res gestae*. - Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*. (36 a)

The term *res gestae* refers to "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act."[31] In a general

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[30] *Id.*, p. 24; bold emphasis supplied.

[31] *Alhambra Bldg. & Loan Ass'n v. DeCelle*, 118 P. 2d 19, 47 C.A. 2d 409; *Reilly Tar & Chemical Corp. v. Lewis*, 61 N.E. 2d 297, 326 Ill. App. 117.

way, *res gestae* includes the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and which are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication.[32] The rule on *res gestae* encompasses the exclamations and statements made by either the participants, *victims*, or spectators to a crime immediately *before*, *during*, or *immediately* after the commission of the crime when the circumstances are such that the statements were made as a *spontaneous* reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.[33]

The test of admissibility of evidence as a part of the *res gestae* is whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded a part of the principal fact or event itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.[34] A declaration or an utterance is thus deemed as part of the *res gestae* that is admissible in evidence as an exception to the hearsay rule when the following requisites concur: (*a*) the principal act, the *res gestae*, is a startling occurrence; (*b*) the statements were made before the declarant had time to contrive or devise; and (*c*) the statements must concern the occurrence in question and its immediately attending circumstances.[35]

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[32] *Kaiko v. Dolinger*, 440 A. 2d 198, 184 Conn. 509; *Southern Surety Co. v. Weaver*, Com. App. 273 S.W. 838.

[33] *People v. Sanchez*, G.R. No. 74740, August 28, 1992, 213 SCRA 70.

[34] *Molloy v. Chicago Rapid Transit Co.*, 166 N.E. 530, 335 Ill. 164; *Campbell v. Gladden*, 118 A. 2d 133, 383 Pa. 144, 53 A.L.R. 2d 1222.

[35] *People v. Guillermo*, G.R. No. 147786, January 20, 2004, 420 SCRA 326; *People v. Dela Cruz*, G.R. No. 152176, October 1, 2003, 412 SCRA 503; *People v. Ignas*, G.R. Nos. 140514-15, September 30, 2003, 412 SCRA 311; *People v. Lobrigas*, G.R. No. 147649, December 17, 2002, 394 SCRA 170; *People v. Peralta*, G.R. No. 94570, September 28, 1994, 237 SCRA 218; *People v. Maguikay*, G.R. Nos. 103226-28, October 14, 1994, 237 SCRA 587, 600.

We find that the requisites concurred herein. Firstly, the principal act – the shooting of Haide – was a startling occurrence. Secondly, his statement to his mother about being shot by the group of Berting was made *before* Haide had time to contrive or to devise considering that it was uttered *immediately after* the shooting. And, thirdly, the statement directly concerned the startling occurrence itself and its attending circumstance (that is, the identities of the assailants). Verily, the statement was reliable as part of the *res gestae* for being uttered *in spontaneity and only in reaction to the startling occurrence*.

In the face of the positive identification of all the four accused, it did not matter whether only one or two of them had *actually* fired the fatal shots. Their actions indicated that a conspiracy existed among them. Indeed, a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[36] Direct proof of a previous agreement among the accused to commit the crime is not necessary,[37] for conspiracy may be inferred from the conduct of the accused at the time of their commission of the crime that evinces a common understanding among them on perpetrating the crime.[38] Thus, the concerted acts of the four manifested their agreement to kill Haide, resulting in each of them being guilty of the crime regardless of whether he actually fired at the victim or not. It is axiomatic that once conspiracy is established, the act of one is the act of all;[39] and that all the conspirators are then liable as co-principals.[40]

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[36] Article 8, *Revised Penal Code*.

[37] *People v. Ronquillo*, G.R. No. 126136, April 5, 2002, 380 SCRA 266; *People v. Geguira*, G.R. No. 130769, March 13, 2000, 328 SCRA 11, 32-33.

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

[39] *People v. Sotes*, G.R. No. 101337, August 7, 1996, 260 SCRA 353, 365; *People v. Pablo*, G.R. Nos. 120394-97, January 16, 2001, 349 SCRA 79.

[40] *People v. Peralta*, G.R. No. L-19069, October 29, 1968, 25 SCRA 759, 776-777; *People v. Pablo*, *supra*.

But did not the fact that the name Berting *without any surname* being too generic open the identification of the accused as the assailants to disquieting doubt about their complicity?

We hold that there was no need for a surname to be attached to the nickname Berting in order to insulate the identification by Haide from challenge. The victim's *res gestae* statement was only one of the competent and reliable pieces of identification evidence. As already shown, the accused were competently incriminated also by Remedios and Francisco in a manner that warranted the logical inference that they, *and no others*, were the assailants. Also, that Berting was the natural nickname for a person whose given name was Gilberto, like herein accused Gilberto, Sr. and Gilberto, Jr., was a matter of common knowledge in the Philippines. In fine, the pieces of identification evidence, including Haide's *res gestae* statement, collaborated to render their identification unassailable.

Relevantly, the Court has distinguished two types of positive identification in *People v. Gallarde*,[41] namely: (*a*) that by direct evidence, through an eyewitness to the very commission of the act; and (*b*) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. The Court said:

> xxx **Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime**. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, **although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.** This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other

[41] G.R. No. 133025, February 17, 2000, 325 SCRA 835.

pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection.[42]

To conclude, the identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused.

Faced with their positive identification, the four accused had to establish convincing defenses. They opted to rely on denial and their respective alibis, however, but both the RTC and the CA rightly rejected such defenses.

The rejection was warranted. Long judicial experience instructs that their denial and alibis, being too easy to invent, could not overcome their positive identification by credible Prosecution witnesses whose motives for the identification were not shown to be ill or vile. Truly, a positive identification that is categorical, consistent, and devoid of any showing of ill or vile motive on the part of the Prosecution witnesses always prevails over alibi and denial that are in the nature of negative and self-serving evidence.[43] To be accepted, the denial and

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[42] *Id.,* at pp. 849-850; bold emphasis supplied.

[43] *People v. Gonzales*, G.R. No. 140676, July 31, 2002, 385 SCRA 573, 580; *People v. Ocampo,* G.R. No. 80262, September 1, 1993, 226 SCRA 1;

alibi must be substantiated by clear and convincing evidence establishing not only that the accused did not take part in the commission of the imputed criminal act but also that it was physically impossible for the accused to be at or near the place of the commission of the act at or about the time of its commission. In addition, their proffered alibis were really unworthy of credit because only the accused themselves and their relatives and other intimates substantiated them.[44]

2.

The essence of treachery is in the mode of attack, not in the relative position of the victim and the assailant

The RTC ruled out the attendance of treachery due to its persuasion that the victim must have been facing his assailants at the time of the assault and was thus not taken by surprise. The CA differed from the RTC, however, and stressed that regardless of the position of the victim, the essence of treachery was the element of surprise that the assailants purposely adopted to ensure that the victim was not able to defend himself.[45]

We uphold the ruling of the CA.

There is treachery when: (*a*) at the time of the attack, the victim was not in a position to defend himself; and (*b*) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[46] The essence of treachery lies in the suddenness of the attack that leaves the victim unable to defend himself, thereby ensuring

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People v. Herico, G.R. Nos. 89682-83, December 21, 1990, 192 SCRA 655*; People v. Fulinara*, G.R. No. 88326, August 3, 1995, 247 SCRA 28; *People v. Cardesan*, G.R. No. L-29090, April 29, 1974, 56 SCRA 631.

[44] *People v. Abendan*, G.R. Nos. 132026-27, June 28, 2001, 360 SCRA 106, 121-122.

[45] CA *Rollo*, p. 182.

[46] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 632; *People v. Ave*, G.R. Nos. 137274-75, October 18, 2002, 391 SCRA 225, 246.

the commission of the offense.[47] It is the suddenness of the attack coupled with the inability of the victim to defend himself or to retaliate that brings about treachery; consequently, treachery may still be appreciated even if the victim was facing the assailant.[48]

Here, the elements of treachery were present. His assailants gunned Haide down while he was preoccupied in the kitchen of his own abode with getting dinner ready for the household. He was absolutely unaware of the imminent deadly assault from outside the kitchen, and was for that reason in no position to defend himself or to repel his assailants.

The argument of the accused that the Prosecution did not show that they had consciously and deliberately adopted the manner of killing Haide had no substance, for the testimonies of Remedios and Francisco disclose the contrary.

Remedios' testimony about seeing the four accused taking positions near the door to the kitchen immediately preceding the shooting of Haide was as follows:

Atty. Fernandez:

x x x x x x x x x

Q. Were you present when the late Haide Cagatan was shot?

A. Yes, I was present.

Q. Could you possibly tell the Court in what particular place you were when the alleged incident took place?

A. I was in the ground floor.

Q. What were you doing there?

A. I attended my child (to) answer(ing) the call of his (*sic*) nature.

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[47] *People v. Sanchez*, G.R. No. 188610, June 29, 2010; *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747; *People v. Escote, Jr.*, *supra*, pp. 632-633.

[48] *People v. Aguilar*, 88 Phil 693 (1951).

Q. Now, could you possibly describe before this Honorable Court, Mrs. Cagatan, the exact event that took place when the alleged shooting incident took place in your presence?

A. **At that time, I attended my child (to) answer(ing) the call of (his) nature and after doing that when I was about to stand up to go up I saw the Villarico's was (*sic*) at the back of the kitchen.**

Q. **At the time you saw them was (*sic*) any one of them saw you likewise?**

A. **There was.**

Q. **Who was he?**

A. **Gilberto Villarico, Jr.**

Q. **At that precise time when you saw them and one of them saw you, what did Villarico, Jr. do?**

A. **He aimed his gun to me.**

Q. Could you possibly demonstrate that to the Court?

A. (Witness demonstrated by squatting position)

Q. **Now at that precise moment when you saw Villarico, Jr. on a squatting position pointing his gun at you, what was the exact action that you did?**

A. **When he aimed his gun to me I immediately dropped to the ground.**

x x x x x x x x x

Q. **Since you were personally present could you still remember Mrs. Cagatan how many gun burst you head (sic) at that precise moment when you dropped to the ground because Villarico Jr. was aiming his gun at you. How many gun burst did you hear?**

A. **Three gunbursts.**

Q. **Let us go back to the time when Villarico, Jr. pointed his gun to you. Do you still remember what were the other accused doing or where were they at that time?**

A. **I can remember.**

Q. Please tell the Honorable Court.

A. **Gilberto Villarico, Sr. was on the right side; Ricky Villarico was on the left side and behind Gilberto Villarico, Sr. was Jerry Ramientos and behind Ricky Villarico is (*sic*) Gilberto Villarico Jr.**

Q. **What were Ricky and Gilberto Villarico, Jr. doing at the time?**

A. **They were also dropping themselves on the ground and aimed their guns.**

Q. **To what particular object that they were aiming their guns?**

A. **To the door of our kitchen.**

Q. **How about Ramientos, where was he at that time when you saw the accused pointing their guns towards the door of your kitchen?**

A. **Ramientos was standing behind Gilberto Villarico Sr.**[49]

Likewise, Francisco saw the four accused in the same positions that Remedios had seen them moments prior to the shooting. He claimed that they were aiming their firearms at the kitchen and continued aiming their firearms even as they were leaving the crime scene, *viz*:

Atty. Fernandez:

x x x x x x x x x

Q. Now you said that you saw all of the accused at the time when your late son Haide Cagatan was murdered in the evening of August 8. Could you possibly explain to this Honorable Court at the very first time what did you see?

A. After I came from the toilet I was proceeding to the kitchen because Haide was preparing food and he was calling for dinner. When Haide Cagatan was calling for dinner and at the time I was proceeding to the door of the kitchen, when I was near the door I heard the gun shots.

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[49] TSN, March 29, 2000, pp. 5-6.

Q. At the time when you heard gunshots, what did you do?

A. **I laid down flat on the ground while my head is (sic) looking up and there I saw the 3 Villaricos bringing a revolver. They came from aiming their guns towards upstairs and they are about to withdraw from that place together with Jerry Ramientos.**

x x x x x x x x x

Q. **Now, since you said that you saw the accused Villaricos, could you possibly tell the Court, what were their responsible position(s) in relation to the door of the kitchen?**

A. **They were in shooting position as they aimed upward and they were bringing revolver aiming upstairs.**

Q. **In relation to the door of the kitchen, could you possibly tell the Court what were their responsible position at that time when you saw them?**

A. **The four of them were situated in front of the kitchen door. Villarico Jr. and Villarico Sr. were facing each other while Ricky Villarico and Jerry Ramientos were also facing each other**.[50]

The testimonies of Remedios and Francisco on how and where the four accused had deliberately and strategically positioned themselves could not but reveal their deliberate design to thereby ensure the accomplishment of their design to kill Haide without any possibility of his escape or of any retaliation from him. Aptly did the CA observe:

A perusal of the information shows that treachery was properly alleged to qualify the killing of Heide [sic] Cagatan to murder. The prosecution was likewise able to prove treachery through the element of surprise rendering the victim unable to defend himself. In this case, the evidence shows that the victim, who was in the kitchen preparing dinner, could be seen from the outside through the holes of the wall. The witnesses consistently described the kitchen's wall as three feet high bamboo splits (sa-sa), accented with bamboo splits woven to look like a chessboard with 4-inch holes in between. The

[50] TSN, March 10, 2000, pp. 5-7.

accused-appellants, likewise, positioned themselves outside the kitchen door at night where the victim could not see them. When the accused-appellants shot him, he was caught unaware.[51]

3.
Penalty and Damages

There is no question that the CA justly pronounced all the four accused guilty beyond reasonable doubt of murder, and punished them with *reclusion perpetua* pursuant to Article 248[52] of the *Revised Penal Code*, in relation to Article 63, paragraph 2, of the *Revised Penal Code*, considering the absence of any generic aggravating circumstance.

However, the CA did not explain why it did not review and revise the grant by the RTC of civil liability in the amount of *only* ₱50,000.00. Thereby, the CA committed a plainly reversible error for ignoring existing laws, like Article 2206 of the *Civil*

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[51] CA *Rollo*, pp. 182-183.

[52] Article 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, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by Section 6, Republic Act No. 7659, approved on December 13, 1993).

Code,[53] which prescribes a death indemnity separately from moral damages, and Article 2230 of the *Civil Code*,[54] which requires exemplary damages in case of death due to crime when there is at least one aggravating circumstance; and applicable jurisprudence, specifically, *People v. Gutierrez*,[55] where we held that moral damages should be awarded to the heirs without need of proof or pleading in view of the violent death of the victim, and *People v.Catubig*,[56] where we ruled that exemplary

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[53] Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. **In addition:**

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(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.

[54] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[55] G.R. No. 188602, February 4, 2010, 611 SCRA 633.

[56] G.R. No. 137842, August 23, 2001, 363 SCRA 621, where the Court explained:

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating

damages were warranted whenever the crime was attended by an aggravating circumstance, whether qualifying or ordinary. Here, the aggravating circumstance of treachery, albeit attendant or qualifying in its effect, justified the grant of exemplary damages.

Plain oversight might have caused both the RTC and the CA to lapse into the serious omissions. Nonetheless, a rectification should now be made, for, indeed, gross omissions, intended or not, should be eschewed. It is timely, therefore, to remind and to exhort all the trial and appellate courts to be always mindful of and to apply the pertinent laws and jurisprudence on the kinds and amounts of indemnities and damages appropriate in criminal cases lest oversight and omission will unduly add to the sufferings of the victims or their heirs. Nor should the absence of specific assignment of error thereon inhibit the *sua sponte* rectification of the omissions, for the grant of *all* the proper kinds and amounts of civil liability to the victim or his heirs is a matter of law and judicial policy not dependent upon or controlled by an assignment of error. An appellate tribunal has a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned,[57] for technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.

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circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.

[57] Bersamin, *Appeal and Review in the Philippines*, 2nd Edition, Central Professional Books, Quezon City, p. 180; citing *Hydro Resources Contractors Corporation v. Court of Appeals*, G.R. No. 85714, November 29, 1991, 204 SCRA 309, 315; and *Ortigas, Jr. v. Lufthansa German Airlines*, G.R. No. L-28773, June 30, 1975, 64 SCRA 610.

Indeed, the trend in modern day procedure is to accord broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for resolution that the parties failed to raise or that the lower court ignored.[58]

Consistent with prevailing jurisprudence, we grant to the heirs of Haide ₱75,000.00 as death indemnity;[59] ₱75,000.00 as moral damages;[60] and ₱30,000.00 as exemplary damages.[61] As clarified in *People v. Arbalate*,[62] damages in such amounts are to be granted whenever the accused are adjudged guilty of a crime covered by Republic Act No. 7659, like the murder charged and proved herein. Indeed, the Court, observing in *People v. Sarcia*,[63] citing *People v. Salome*[64] and *People v. Quiachon*,[65] that the "principal consideration for the award of damages xxx is the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender," announced that:

> The litmus test[,] therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to *reclusion perpetua*.

WHEREFORE, we affirm the decision promulgated on June 6, 2003 in CA-G.R. CR No. 24711, finding *GILBERTO VILLARICO, SR., GILBERTO VILLARICO, JR., JERRY RAMENTOS,*

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[58] *Ibid.*, citing *Casa Filipina Realty Corporation v. Office of the President*, G.R. No. 99346, February 7, 1995, 241 SCRA 165.

[59] *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769, 782; *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[60] *People v. Martinez*, G.R. No. 182687, July 23, 2009, 593 SCRA 732.

[61] *People v. Satonero*, *supra*.

[62] *Supra*, note 59.

[63] G.R. No. 169641, September 10, 2009, 599 SCRA 20.

[64] G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

[65] G.R. No. 170236, August 31, 2006, 500 SCRA 704, 720.

and *RICKY VILLARICO* guilty of murder and sentencing each of them to suffer *reclusion perpetua*, subject to the modification that they are held jointly and solidarily liable to pay to the heirs of the late Haide Cagatan death indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱30,000.00.

The accused shall pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160949. April 4, 2011]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PL MANAGEMENT INTERNATIONAL PHILIPPINES, INC.,** *respondent.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX REFUND; FINAL ADJUSTMENT RETURN; ONCE A TAXPAYER OPTED TO CARRY-OVER ITS UNUTILIZED CREDITABLE WITHHOLDING TAX TO A PARTICULAR YEAR, THE CARRY-OVER COULD NO LONGER BE CONVERTED INTO A CLAIM FOR TAX REFUND BECAUSE OF THE IRREVOCABILITY RULE PROVIDED IN SECTION 76 OF THE NIRC.— Inasmuch as the respondent already opted to carry over its unutilized creditable withholding tax of ₱1,200,000.00 to taxable year 1998, the carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the NIRC of 1997. Thereby, the respondent

became barred from claiming the refund. However, in view of its irrevocable choice, the respondent remained entitled to utilize that amount of ₱1,200,000.00 as tax credit in succeeding taxable years until fully exhausted. In this regard, prescription did not bar it from applying the amount as tax credit considering that there was no prescriptive period for the carrying over of the amount as tax credit in subsequent taxable years.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Zamora Poblador Vasquez & Bretana for respondent.

D E C I S I O N

BERSAMIN, *J.*:

How may the respondent taxpayer still recover its unutilized creditable withholding tax for taxable year 1997 after its written claim for refund was not acted upon by the petitioner, whose inaction was upheld by the Court of Tax Appeals (CTA) on the ground of the claim for tax refund being already barred by prescription?

Nature of the Case

The inaction of petitioner Commissioner of Internal Revenue (Commissioner) on the respondent's written claim for tax refund or tax credit impelled the latter to commence judicial action for that purpose in the CTA. However, the CTA denied the claim on December 10, 2001 for being brought beyond two years from the accrual of the claim.

On appeal, the Court of Appeals (CA) reversed the CTA's denial through the decision promulgated in C.A.-G.R. Sp. No. 68461 on November 28, 2002, and directed the petitioner to refund the unutilized creditable withholding tax to the respondent.[1]

[1] *Rollo*, pp. 31-39; penned by Associate Justice Ruben T. Reyes (later Presiding Justice of the Court of Appeals and a Member of the Court, but

Hence, the petitioner appeals.

Antecedents

In 1997, the respondent, a Philippine corporation, earned an income of ₱24,000,000.00 from its professional services rendered to UEM-MARA Philippines Corporation (UMPC), from which income UMPC withheld ₱1,200,000.00 as the respondent's withholding agent.[2]

In its 1997 income tax return (ITR) filed on April 13, 1998, the respondent reported a net loss of ₱983,037.00, but expressly signified that it had a creditable withholding tax of ₱1,200,000.00 for taxable year 1997 to be claimed as tax credit in taxable year 1998.[3]

On April 13, 1999, the respondent submitted its ITR for taxable year 1998, in which it declared a net loss of ₱2,772,043.00. Due to its net-loss position, the respondent was unable to claim the ₱1,200,000.00 as tax credit.

On April 12, 2000, the respondent filed with the petitioner a written claim for the refund of the ₱1,200,000.00 unutilized creditable withholding tax for taxable year 1997.[4] However, the petitioner did not act on the claim.

Ruling of the CTA

Due to the petitioner's inaction, the respondent filed a petition for review in the CTA (CTA Case No. 6107) on April 14, 2000, thereby commencing its judicial action.

On December 10, 2001, the CTA denied the respondent's claim on the ground of prescription,[5] to wit:

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already retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Edgardo P. Sundiam (now deceased) concurring.

[2] *Id.,* p. 32

[3] *Id.,* p. 85 (copy of BIR Form 1702, which is Annex 1 of the Comment).

[4] *Id.,* pp. 32-33.

[5] *Id.,* pp. 42-49.

Records reveal that Petitioner filed its Annual Income Tax Return for taxable year 1997 on April 13, 1998 (Exhibit "A") and its claim for refund with the BIR on April 12, 2000 (Exhibit "D" and No. 2 of the Statement of Admitted Facts and Issues). Several days thereafter, or on April 14, 2000, Petitioner filed an appeal with this Court.

The aforementioned facts clearly show that the judicial claim for refund via this Petition for Review was already filed beyond the two-year prescriptive period mandated by Sections 204 (C) and 229 of the Tax Code xxx

x x x x x x x x x

As earlier mentioned, Petitioner filed its Annual ITR on April 13, 1998 and filed its judicial claim for refund only on April 14, 2000 which is beyond the two-year period earlier discussed. The aforequoted Sections 204 (C) and 229 of the Tax Code mandates that both the administrative and judicial claims for refund must be filed within the two-year period, otherwise the taxpayer's cause of action shall be barred by prescription. Unfortunately, this lapse on the part of Petitioner proved fatal to its claim.

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WHEREFORE, in view of the foregoing the Petition for Review is hereby DENIED due to prescription.

Ruling of the CA

Aggrieved, the respondent appealed to the CA, assailing the correctness of the CTA's denial of its judicial claim for refund on the ground of bar by prescription.

As earlier mentioned, the CA promulgated its decision on November 28, 2002, holding that the two-year prescriptive period, which was not jurisdictional (citing *Oral and Dental College v. Court of Tax Appeals*[6] and *Commissioner of Internal Revenue v. Philippine American Life Insurance Company*[7]), might be suspended for reasons of equity.[8] The CA thus disposed as follows:

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[6] 102 Phil. 912 (1958).

[7] G.R. No. 105208, May 29, 1995, 244 SCRA 446.

[8] Citing *Panay Electric Co. v. Collector*, 103 Phil. 819 (1958).

WHEREFORE, the petition is partly GRANTED and the assailed CTA Decision partly ANNULLED. Respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner PL Management International Phils., Inc., the amount of ₱1,200,000.00 representing its unutilized creditable withholding tax in taxable year 1997.[9]

The CA rejected the petitioner's motion for reconsideration.[10]

Issues

In this appeal, the petitioner insists that:

I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE TWO-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 229 OF THE TAX CODE IS NOT JURISDICTIONAL, THUS THE CLAIM FOR REFUND OF RESPONDENT IS SUSPENDED FOR REASONS OF EQUITY.

II. THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT'S JUDICIAL RIGHT TO CLAIM FOR REFUND BROUGHT BEFORE THE COURT OF APPEALS ON APRIL 14, 2000 WAS ONE DAY LATE ONLY.[11]

The petitioner argues that the decision of the CA suspending the running of the two-year period set by Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997) on ground of equity was erroneous and had no legal basis; that equity could not supplant or replace a clear mandate of a law that was still in force and effect; that a claim for a tax refund or tax credit, being in the nature of a tax exemption to be treated as in derogation of sovereign authority, must be construed *in strictissimi juris* against the taxpayer; that the respondent's two-year prescriptive period under Section 229 of the NIRC of 1997 commenced to run on April 13, 1998, the date it filed its ITR for taxable year 1997; that by reckoning the period from April 13, 1998, the respondent had only until April 12, 2000 within which to commence its judicial action for refund with

[9] *Rollo*, p. 39.

[10] *Id.*, pp. 40-41.

[11] *Id.*, p. 20.

the CTA, the year 2000 being a leap year; that its filing of the judicial action on April 14, 2000 was already tardy; and that the factual findings of the CTA, being supported by substantial evidence, should be accorded the highest respect.

In its comment, the respondent counters that it filed its judicial action for refund within the statutory two-year period because the correct reckoning started from April 15, 1998, the last day for the filing of the ITR for taxable year 1997; that the two-year prescriptive period was also not jurisdictional and might be relaxed on equitable reasons; and that a disallowance of its claim for refund would result in the unjust enrichment of the Government at its expense.

Ruling of the Court

We reverse and set aside the decision of the CA to the extent that it orders the petitioner *to refund* to the respondent the ₱1,200,000.00 representing the unutilized creditable withholding tax in taxable year 1997, but permit the respondent to apply that amount as *tax credit* in succeeding taxable years until fully exhausted.

Section 76 of the NIRC of 1997 provides:

Section 76. *Final Adjustment Return*. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:

(A) Pay the balance of tax still due; or

(B) Carry over the excess credit; or

(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply**

the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.

The predecessor provision of Section 76 of the NIRC of 1997 is Section 79 of the NIRC of 1985, which provides:

Section 79. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

(a) Pay the excess tax still due; or

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

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

As can be seen, Congress added a sentence to Section 76 of the NIRC of 1997 in order to lay down the irrevocability rule, to wit:

xxx Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[12] the Court expounds on the two alternative options of a corporate taxpayer whose total quarterly income

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[12] G.R. Nos. 156637 and 162004, December 14, 2005, 477 SCRA 761, 772. See also *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010, 626 SCRA 172; and *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.*, G.R. No. 174157, October 20, 2010.

tax payments exceed its tax liability, and on how the choice of one option precludes the other, *viz*:

> The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
>
> The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.
>
> **These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention – whether to request a tax refund or claim a tax credit – by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection**.
>
> **One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid**. xxx

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[13] the Court, citing the aforequoted pronouncement in *Philam Asset Management, Inc.*, points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains:

> Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

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[13] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009, 592 SCRA 219, 231.

The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the irrevocability rule. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the irrevocability rule. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the irrevocability rule, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam,* where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. **The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit**

of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.

Inasmuch as the respondent already opted to carry over its unutilized creditable withholding tax of ₱1,200,000.00 to taxable year 1998, the carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the NIRC of 1997. Thereby, the respondent became barred from claiming the refund.

However, in view of its irrevocable choice, the respondent remained entitled to utilize that amount of ₱1,200,000.00 as tax credit in succeeding taxable years until fully exhausted. In this regard, prescription did not bar it from applying the amount as tax credit considering that there was no prescriptive period for the carrying over of the amount as tax credit in subsequent taxable years.[14]

The foregoing result has rendered unnecessary any discussion of the assigned errors committed by the CA.

WHEREFORE, we reverse and set aside the decision dated November 28, 2002 promulgated in C.A.-G.R. Sp. No. 68461 by the Court of Appeals, and declare that PL Management International Phils., Inc. is not entitled to the refund of the unutilized creditable withholding tax of ₱1,200,000.00 on account of the irrevocability rule provided in Section 76 of the National Internal Revenue Code of 1997.

We rule that PL Management International Phils., Inc. may still use the creditable withholding tax of ₱1,200,000.00 as tax credit in succeeding taxable years until fully exhausted.

No pronouncement on costs of suit.

SO ORDERED.

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

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[14] *Id.*

THIRD DIVISION

[G.R. No. 167022. April 4, 2011]

LICOMCEN, INCORPORATED, *petitioner, vs.* **FOUNDATION SPECIALISTS, INC.,** *respondent.*

[G.R. No. 169678. April 4, 2011]

FOUNDATION SPECIALISTS, INC., *petitioner, vs.* **LICOMCEN, INCORPORATED,** *respondent.*

SYLLABUS

1. CIVIL LAW; ARBITRATIONS; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER DISPUTES ARISING FROM, OR CONNECTED WITH, CONTRACTS ENTERED INTO BY PARTIES INVOLVED IN CONSTRUCTION IN THE PHILIPPINES, WHETHER THE DISPUTE ARISES BEFORE OR AFTER THE ABANDONMENT OR BREACH THEREOF.— The CIAC was created through Executive Order No. 1008 (*E.O. 1008*), in recognition of the need to establish an arbitral machinery that would expeditiously settle construction industry disputes. The prompt resolution of problems arising from or connected with the construction industry was considered of necessary and vital for the fulfillment of national development goals, as the construction industry provides employment to a large segment of the national labor force and is a leading contributor to the gross national product. Section 4 of E.O. 1008 states: Sec. 4. *Jurisdiction*. **The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof.** These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration. The jurisdiction of

the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost. Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

2. ID.; ID.; THE CIAC'S JURISDICTION CANNOT BE LIMITED BY PARTIES' STIPULATION THAT ONLY DISPUTES IN CONNECTION WITH OR ARISING OUT OF THE PHYSICAL CONSTRUCTION ACTIVITIES ARE ARBITRABLE BEFORE IT.— The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law. It cannot be fixed by the will of the parties to a dispute, the parties can neither expand nor diminish a tribunal's jurisdiction by stipulation or agreement. The text of Section 4 of E.O. 1008 is broad enough to cover *any dispute arising from, or connected with construction contracts*, whether these involve mere contractual money claims or execution of the works. Considering the intent behind the law and the broad language adopted, LICOMCEN erred in insisting on its restrictive interpretation of GC-61. The CIAC's jurisdiction cannot be limited by the parties' stipulation that only disputes in connection with or arising out of the physical construction activities (*execution of the works*) are arbitrable before it.

3. ID.; ID.; ALL THAT IS REQUIRED FOR THE CIAC TO ACQUIRE JURISDICTION IS FOR THE PARTIES TO A CONSTRUCTION CONTRACT TO AGREE TO SUBMIT THEIR DISPUTE TO ARBITRATION; THE ARBITRATION CLAUSE IN THE CONSTRUCTION CONTRACT *IPSO FACTO* VESTED THE CIAC WITH JURISDICTION.— All that is required for the CIAC to acquire jurisdiction is for the parties to a construction contract to agree to submit their dispute to arbitration. Section 1, Article III of the 1988 CIAC Rules of Procedure (as amended by CIAC Resolution Nos. 2-91 and 3-93) states: Section 1. *Submission to CIAC Jurisdiction*. – **An arbitration clause in a construction contract** or a submission to arbitration of a construction dispute **shall be deemed an agreement to submit an existing or**

future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC. An arbitration agreement or a submission to arbitration shall be in writing, but it need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration. In *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corporation*, the Court declared that "the bare fact that the parties x x x incorporated an arbitration clause in [their contract] is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties. **The arbitration clause in the construction contract *ipso facto* vested the CIAC with jurisdiction**." Under GC-61 and GC-05 of the GCC, read singly and in relation with one another, the Court sees no intent to limit resort to arbitration only to disputes relating to the physical construction activities. *First*, consistent with the intent of the law, an arbitration clause pursuant to E.O. 1008 should be interpreted at its widest signification. Under GC-61, the voluntary arbitration clause covers *any dispute of any kind*, not only arising of out the execution of the works but also *in connection therewith*. The payments, demand and disputed issues in this case – namely, work billings, material costs, equipment and labor standby costs, unrealized profits – all arose because of the construction activities and/or are connected or related to these activities. In other words, they are there because of the construction activities. Attorney's fees and interests payment, on the other hand, are costs directly incidental to the dispute. Hence, the scope of the arbitration clause, as worded, covers all the disputed items.

4. ID.; ID.; IF CIAC'S JURISDICTION CAN NEITHER BE ENLARGED NOR DIMINISHED BY THE PARTIES IT ALSO CANNOT BE SUBJECTED TO A CONDITION PRECEDENT.— In insisting that contractual money claims can be resolved only through court action, LICOMCEN deliberately ignores one of the exceptions to the general rule

stated in GC-05: GC-05. JURISDICTION Any question between the contracting parties that may arise out of or in connection with the Contract, or breach thereof, shall be litigated in the courts of Legaspi City except where otherwise specifically stated or **except when such question is submitted for settlement thru arbitration as provided herein**. The second exception clause authorizes the submission to arbitration of any dispute between LICOMCEN and FSI, even if the dispute does not directly involve the execution of physical construction works. This was precisely the avenue taken by FSI when it filed its petition for arbitration with the CIAC. If the CIAC's jurisdiction can neither be enlarged nor diminished by the parties, it also cannot be subjected to a condition precedent. GC-61 requires a party disagreeing with LICOMCEN's decision to "officially give notice to contest such decision ***through arbitration***" within 30 days from receipt of the decision. However, FSI's April 15, 1998 letter is not the notice contemplated by GC-61; it never mentioned FSI's plan to submit the dispute to arbitration and instead requested LICOMCEN to reevaluate its claims. Notwithstanding FSI's failure to make a proper and timely notice, LICOMCEN's decision (embodied in its March 24, 1998 letter) cannot become "final and binding" so as to preclude resort to the CIAC arbitration.

5. ID.; ID.; THE SUSPENSION OF THE WORKS ARE WRONGFULLY PROLONGED BY PETITIONER.— Under the stipulations, **we consider LICOMCEN's *initial suspension* of the works valid.** GC-38 authorizes the suspension of the works for factors or causes which ESCA deems necessary in the interests of the works and LICOMCEN. The factors or causes of suspension may pertain to a change or revision of works, as cited in the December 16, 1997 and January 6, 1998 letters of ESCA, or to the pendency of a case before the Ombudsman (OMB-ADM-1-97-0622), as cited in LICOMCEN's January 15, 1998 letter and ESCA's January 19, 1998 and February 17, 1998 letters. It was not necessary for ESCA/LICOMCEN to wait for a restraining or injunctive order to be issued in any of the cases filed against LICOMCEN before it can suspend the works. The language of GC-38 gives ESCA/LICOMCEN sufficient discretion to determine whether the existence of a particular situation or condition necessitates the suspension of the works and serves the interests of LICOMCEN. **Although**

we consider the initial suspension of the works as valid, we find that LICOMCEN wrongfully prolonged the suspension of the works (or "indefinite suspension" as LICOMCEN calls it). GC-38 requires ESCA/LICOMCEN to "issue an order lifting the suspension of work when conditions to resume work shall have become favorable or the reasons for the suspension have been duly corrected." The Ombudsman case (OMB-ADM-1-97-0622), which ESCA and LICOMCEN cited in their letters to FSI as a ground for the suspension, was dismissed as early as October 12, 1998, but neither ESCA nor LICOMCEN informed FSI of this development. The pendency of the other cases may justify the continued suspension of the works, but LICOMCEN never bothered to inform FSI of the existence of these cases until the arbitration proceedings commenced. By May 28, 2002, the City Government of Legaspi sent LICOMCEN a notice instructing it to proceed with the Citimall project; again, LICOMCEN failed to relay this information to FSI. Instead, LICOMCEN conducted a rebidding of the Citimall project based on the new design. LICOMCEN's claim that the rebidding was conducted merely to get cost estimates for the new design goes against the established practice in the construction industry. **LICOMCEN's omissions and the imprudent rebidding of the Citimall project are telling indications of LICOMCEN's intent to ease out FSI and terminate their contract.** As with GC-31, GC-42(2) grants LICOMCEN ample discretion to determine what reasons render it against its interest to complete the work – in this case, the pendency of the other cases and the revised designs for the Citimall project. Given this authority, the Court fails to see the logic why LICOMCEN had to resort to an "indefinite suspension" of the works, instead of outrightly terminating the contract in exercise of its rights under GC-42(2).

6. ID.; ID.; THE CLAIM FOR MATERIAL COST AT SITE IS JUSTIFIED.— For LICOMCEN to be liable for the cost of materials or goods, item two of GC-42 requires that a. the materials or goods were reasonably ordered for the Permanent or Temporary Works; b. the materials or goods were delivered to the Contractor but not yet used; and c. the delivery was certified by the Engineer. Both the CIAC and the CA agreed that these requisites were met by FSI to make LICOMCEN

liable for the cost of the steel bars ordered for the Citimall project; the two tribunals differed only to the extent of LICOMCEN's liability because the CA opined that it should be limited only to 50% of the cost of the steel bars. A review of the records compels us to uphold the CA's finding.

7. ID.; ID.; THE COURT OF APPEALS WAS CORRECT IN HOLDING PETITIONER LIABLE FOR 50% OF THE COSTS OF THE STEEL BARS DELIVERED.— It appears that FSI was informed of the necessity of suspending the works as early as December 16, 1997. Pursuant to GC-38 of the GCC, FSI was expected to *immediately comply* with the order to suspend the work. Though ESCA's December 16, 1997 notice may not have been categorical in ordering the suspension of the works, FSI's reply letter of December 18, 1997 indicated that it actually complied with the notice to suspend, as it said, "We hope for the early resolution of the new foundation plan and the resumption of work." Despite the suspension, FSI claimed that it could not stop the delivery of the steel bars (nor found the need to do so) because (a) the steel bars were ordered as early as November 1997 and were already loaded in Manila and expected to arrive in Legaspi City by December 23, 1997, and (b) it expected immediate resumption of work to meet the 90-day deadline. Records, however, disclose that these claims are not entirely accurate. The memorandum of agreement and sale covering the steel bars specifically stated that these would be withdrawn from the Cagayan de Oro depot, not Manila; indeed, the bill of lading stated that the steel bars were loaded in Cagayan de Oro on January 11, 1998, and arrived in Legaspi City *within three days*, on January 14, 1998. The loading and delivery of the steel bar thus happened after FSI received ESCA's December 16, 1997 and January 6, 1998 letters – days after the instruction to suspend the works. Also, the same stipulation that authorizes LICOMCEN to suspend the works allows the extension of the period to complete the works. The relevant portion of GC-38 states: In case of total suspension x x x and the cause of which is not due to any fault of the Contractor [FSI], **the elapsed time between the effective order for suspending work and the order to resume work shall be allowed the Contractor by adjusting the time allowed for his execution of the Contract Works.** The above stipulation, coupled with the short period it took to ship the steel bars

from Cagayan de Oro to Legaspi City, thus negates both FSI's argument and the CIAC's ruling that there was no necessity to stop the shipment so as to meet the 90-day deadline. These circumstances prove that FSI acted imprudently in proceeding with the delivery, contrary to LICOMCEN's instructions. The CA was correct in holding LICOMCEN liable for only 50% of the costs of the steel bars delivered.

8. ID.; ID.; APPELLATE COURT'S DELETION OF THE AWARD FOR EQUIPMENT AND LABOR STANDBY COSTS, PROPER.— The Court upholds the CA's ruling deleting the award for equipment and labor standby costs. We quote in agreement pertinent portions of the CA decision: The CIAC relied solely on the list of 37 pieces of equipment respondent allegedly rented and maintained at the construction site during the suspension of the project with the prorated rentals incurred x x x. To the mind of this Court, **these lists are not sufficient to establish the fact that indeed [FSI] incurred the said expenses**. Reliance on said lists is purely speculative x x x **the list of equipments is a mere index or catalog of the equipments, which may be utilized at the construction site. It is not the best evidence to prove that said equipment were in fact rented** and maintained at the construction site during the suspension of the work. x x x **[FSI] should have presented the lease contracts or any similar documents such as receipts of payments** x x x. **Likewise, the list of employees does not in anyway prove that those employees** in the list were indeed at the construction site or were required to be on call should their services be needed and **were being paid their salaries during the suspension of the project. Thus, in the absence of sufficient evidence, We deny the claim for equipment and labor standby costs.**

9. ID.; ID.; NO DISTINCTION BETWEEN "UNREALIZED PROFIT" AND "ANTICIPATED PROFIT."— FSI contends that it is not barred from recovering unrealized profit under GC-41(2), which states: GC-41. LICOMCEN, INCORPORATED's RIGHT TO SUSPEND WORK OR TERMINATE THE CONTRACT x x x 2. For Convenience of the LICOMCEN, INCORPORATED **x x x. The Contractor [FSI] shall not claim damages for such discontinuance or termination of the Contract**, but the Contractor shall receive compensation for reasonable

expenses incurred in good faith for the performance of the Contract and for reasonable expenses associated with termination of the Contract. The LICOMCEN, INCORPORATED will determine the reasonableness of such expenses. **The Contractor [FSI] shall have no claim for anticipated profits on the work thus terminated, nor any other claim,** except for the work actually performed at the time of complete discontinuance, including any variations authorized by the LICOMCEN, INCORPORATED/Engineer to be done. The prohibition, FSI posits, applies only where the contract was properly and lawfully terminated, which was not the case at bar. FSI also took pains in differentiating its claim for "unrealized profit" from the prohibited claim for "anticipated profits"; supposedly, unrealized profit is "one that is built-in in the contract price, while anticipated profit is not." We fail to see the distinction, considering that the contract itself neither defined nor differentiated the two terms. [A] contract must be interpreted from the language of the contract itself, according to its plain and ordinary meaning." If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of the stipulations shall control.

10. ID.; ID.; THE LIABILITY FOR COSTS OF ARBITRATION SHALL BE BORNE BY THE PARTY AT FAULT.— Under the parties' Terms of Reference, executed before the CIAC, the costs of arbitration shall be equally divided between them, subject to the CIAC's determination of which of the parties shall eventually shoulder the amount. The CIAC eventually ruled that since LICOMCEN was the party at fault, it should bear the costs. As the CA did, we agree with this finding. Ultimately, it was LICOMCEN's imprudent declaration of indefinitely suspending the works that caused the dispute between it and FSI. LICOMCEN should bear the costs of arbitration.

11. ID.; DAMAGES; RESPONDENT IS ENTITLED TO THE PAYMENT OF NOMINAL DAMAGES ON ACCOUNT OF PETITIONER'S FAILURE TO OBSERVE THE PROPER PROCEDURE IN TERMINATING THE CONTRACT BY DECLARING THAT IT WAS MERELY INDEFINITELY SUSPENDED.— On account of our earlier discussion of LICOMCEN's failure to observe the proper procedure in terminating the contract by declaring that it was merely

indefinitely suspended, we deem that FSI is entitled to the payment of nominal damages. Nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is, thus, not for the purpose of indemnification for a loss but for the recognition and vindication of a right. A violation of the plaintiff's right, even if only technical, is sufficient to support an award of nominal damages. FSI is entitled to recover the amount of ₱100,000.00 as nominal damages.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for Licomsen, Inc.
Nelson A. Clemente for Foundation Specialists, Inc.

D E C I S I O N

BRION, *J.*:

THE FACTS

The petitioner, LICOMCEN Incorporated (*LICOMCEN*), is a domestic corporation engaged in the business of operating shopping malls in the country.

In March 1997, the City Government of Legaspi awarded to LICOMCEN, after a public bidding, a lease contract over a lot located in the central business district of the city. Under the contract, LICOMCEN was obliged to finance the construction of a commercial complex/mall to be known as the LCC Citimall (*Citimall*). It was also granted the right to operate and manage Citimall for 50 years, and was, thereafter, required to turn over the ownership and operation to the City Government.[1]

For the Citimall project, LICOMCEN hired E.S. de Castro and Associates (*ESCA*) to act as its engineering consultant. Since the Citimall was envisioned to be a high-rise structure, LICOMCEN contracted respondent Foundation Specialists, Inc.

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[1] *Rollo* (G.R. No. 167022, Vol. I), p. 63.

(*FSI*) to do initial construction works, specifically, the construction and installation of bored piles foundation.[2] LICOMCEN and FSI signed the Construction Agreement,[3] and the accompanying Bid Documents[4] and General Conditions of Contract[5] (*GCC*) on September 1, 1997. Immediately thereafter, FSI purchased the materials needed for the Citimall[6] project and began working in order to meet the 90-day deadline set by LICOMCEN.

On December 16, 1997, LICOMCEN sent word to FSI that it was considering major design revisions and the suspension of work on the Citimall project. FSI replied on December 18, 1997, expressing concern over the revisions and the suspension, as it had fully mobilized its manpower and equipment, and had ordered the delivery of steel bars. FSI also asked for the payment of accomplished work amounting to ₱3,627,818.00.[7] A series of correspondence between LICOMCEN and FSI then followed.

ESCA wrote FSI on January 6, 1998, stating that the revised design necessitated a change in the bored piles requirement and a substantial reduction in the number of piles. Thus, ESCA proposed to FSI that *only 50% of the steel bars be delivered to the jobsite* and the rest be shipped back to Manila.[8] Notwithstanding this instruction, all the ordered steel bars arrived in Legaspi City on January 14, 1998.[9]

On January 15, 1998, LICOMCEN instructed FSI to "hold all construction activities on the project,"[10] in view of a pending administrative case against the officials of the City Government

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[2] *Ibid.*

[3] *Id.* at 96-105.

[4] *Id.* at 106-119.

[5] *Id.* at 120-156.

[6] *Id.* at 903.

[7] *Id.* at 202-203.

[8] *Id.* at 260.

[9] Bill of Lading; *id.* at 261.

[10] *Id.* at 64.

of Legaspi and LICOMCEN filed before the Ombudsman (OMB-ADM-1-97-0622).[11] On January 19, 1998, ESCA formalized the suspension of construction activities and ordered the construction's demobilization until the case was resolved.[12] In response, FSI sent ESCA a letter, dated February 3, 1998, requesting payment of costs incurred on account of the suspension which totaled ₱22,667,026.97.[13] FSI repeated its demand for payment on March 3, 1998.[14]

ESCA replied to FSI's demands for payment on March 24, 1998, objecting to some of the claims.[15] It denied the claim for the cost of the steel bars that were delivered, since the delivery was done in complete disregard of its instructions. It further disclaimed liability for the other FSI claims based on the suspension, as its cause was not due to LICOMCEN's fault. **FSI rejected ESCA's evaluation of its claims in its April 15, 1998 letter.**[16]

On March 14, 2001, FSI sent a final demand letter to LICOMCEN for payment of ₱29,232,672.83.[17] Since LICOMCEN took no positive action on FSI's demand for payment,[18] FSI filed a petition for arbitration with the Construction Industry Arbitration Commission (*CIAC*) on October 2, 2002, docketed as CIAC Case No. 37-2002.[19] In the arbitration petition, FSI demanded payment of the following amounts:

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[11] *Id.* at 184.

[12] *Id.* at 185.

[13] *Id.* at 195.

[14] *Id.* at 200.

[15] *Id.* at 212.

[16] *Id.* at 214.

[17] *Id.* at 215-217.

[18] In reply to FSI's March 24, 2001 demand letter, LICOMCEN simply stated that the matter would be referred to its finance and legal department, in its March 24, 2001 letter, *id.* at 430.

[19] *Id.* at 90-95.

a. Unpaid accomplished work billings ..... ₱ 1,264,404.12
b. Material costs at site 15,143,638.51
c. Equipment and labor standby costs 3,058,984.34
d. Unrealized gross profit 9,023,575.29
e. Attorney's fees 300,000.00
f. Interest expenses ..... equivalent to 15% of the total claim

LICOMCEN again denied liability for the amounts claimed by FSI. It justified its decision to indefinitely suspend the Citimall project due to the cases filed against it involving its Lease Contract with the City Government of Legaspi. LICOMCEN also assailed the CIAC's jurisdiction, contending that FSI's claims were matters not subject to arbitration under GC-61 of the GCC, but one that should have been filed before the regular courts of Legaspi City pursuant to GC-05.[20]

During the preliminary conference of January 28, 2003, LICOMCEN reiterated its objections to the CIAC's jurisdiction, which the arbitrators simply noted. Both FSI and LICOMCEN then proceeded to draft the Terms of Reference.[21]

On February 4, 2003, LICOMCEN, through a collaborating counsel, filed its *Ex Abundati Ad Cautela* Omnibus Motion, insisting that FSI's petition before the CIAC should be dismissed for lack of jurisdiction; thus, it prayed for the suspension of the arbitration proceedings until the issue of jurisdiction was finally settled. The CIAC denied LICOMCEN's motion in its February 20, 2003 order,[22] finding that the question of jurisdiction depends on certain factual conditions that have yet to be established by ample evidence. As the CIAC's February 20, 2003 order stood uncontested, the arbitration proceedings continued, with both parties actively participating.

The CIAC issued its decision on July 7, 2003,[23] ruling in favor of FSI and awarding the following amounts:

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[20] *Id.* at 224-229.

[21] *Id.* at 1863-1869.

[22] *Rollo* (G.R. No. 167022, Vol. I), pp. 889-890.

[23] *Id.* at 894-908.

a. Unpaid accomplished work billings	₱ 1,264,404.12
b. Material costs at site	14,643,638.51
c. Equipment and labor standby costs	2,957,989.94
d. Unrealized gross profit	5,120,000.00

LICOMCEN was also required to bear the costs of arbitration in the total amount of ₱474,407.95.

LICOMCEN appealed the CIAC's decision before the Court of Appeals (*CA*). On November 23, 2004, the CA upheld the CIAC's decision, modifying only the amounts awarded by (a) reducing LICOMCEN's liability for material costs at site to ₱5,694,939.87, and (b) deleting its liability for equipment and labor standby costs and unrealized gross profit; all the other awards were affirmed.[24] Both parties moved for the reconsideration of the CA's Decision; LICOMCEN's motion was denied in the CA's February 4, 2005 Resolution, while FSI's motion was denied in the CA's September 13, 2005 Resolution. Hence, the parties filed their own petition for review on *certiorari* before the Court.[25]

LICOMCEN's Arguments

LICOMCEM principally raises the question of the CIAC's jurisdiction, insisting that FSI's claims are non-arbitrable. In support of its position, LICOMCEN cites GC-61 of the GCC:

GC-61. DISPUTES AND ARBITRATION

Should **any dispute of any kind** arise between the LICOMCEN INCORPORATED and the Contractor [referring to FSI] or the Engineer [referring to ESCA] and the Contractor **in connection with, or arising out of the execution of the Works**, such dispute shall first be referred to and settled by the LICOMCEN, INCORPORATED who shall within a period of thirty (30) days after being formally requested by either party to resolve the dispute, issue a written decision to the Engineer and Contractor.

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[24] *Id.* at 62-85.

[25] LICOMCEN's petition for review on *certiorari* is docketed as G.R. No. 167022, while FSI's petition for review on *certiorari* is docketed as G.R. No. 169678.

Such decision shall be final and binding upon the parties and the Contractor shall proceed with the execution of the Works with due diligence notwithstanding any Contractor's objection to the decision of the Engineer. If within a period of thirty (30) days from receipt of the LICOMCEN, INCORPORATED's decision on the dispute, either party does not officially give notice to contest such decision through arbitration, the said decision shall remain final and binding. However, should any party, within thirty (30) days from receipt of the LICOMCEN, INCORPORATED's decision, contest said decision, the dispute shall be submitted for arbitration under the Construction Industry Arbitration Law, Executive Order 1008. The arbitrators appointed under said rules and regulations shall have full power to open up, revise and review any decision, opinion, direction, certificate or valuation of the LICOMCEN, INCORPORATED. Neither party shall be limited to the evidence or arguments put before the LICOMCEN, INCORPORATED for the purpose of obtaining his said decision. No decision given by the LICOMCEN, INCORPORATED shall disqualify him from being called as a witness and giving evidence in the arbitration. It is understood that the obligations of the LICOMCEN, INCORPORATED, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.[26]

LICOMCEN posits that only disputes "in connection with or arising out of the execution of the Works" are subject to arbitration. LICOMCEN construes the phrase ***"execution of the Works"*** as referring to the *physical construction activities*, since "Works" under the GCC specifically refer to the "structures and facilities" required to be constructed and completed for the Citimall project.[27] It considers FSI's claims as mere ***contractual monetary claims*** that should be litigated before the courts of Legaspi City, as provided in GC-05 of the GCC:

GC-05. JURISDICTION

Any question between the contracting parties that may arise out of or in connection with the Contract, or breach thereof, shall

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[26] *Rollo* (G.R. No. 167022, Vol. I), p. 156.

[27] LICOMCEN cites GC-1.14, GC-1.09 and GC-1.13 which defined the terms "works," "permanent works," and "temporary works," respectively; *id.* at 38, and *rollo* (G.R. No. 167022, Vol. II), pp. 1926-1928.

be litigated in the courts of Legaspi City except where otherwise specifically stated or except when such question is submitted for settlement thru arbitration as provided herein.[28]

LICOMCEN also contends that FSI failed to comply with the condition precedent for arbitration laid down in GC-61 of the GCC. An arbitrable dispute under GC-61 must first be referred to and settled by LICOMCEN, which has 30 days to resolve it. If within a period of 30 days from receipt of LICOMCEN's decision on the dispute, either party does not officially give notice to contest such decision through arbitration, the said decision shall remain final and binding. However, should any party, within 30 days from receipt of LICOMCEN's decision, contest said decision, the dispute shall be submitted for arbitration under the Construction Industry Arbitration Law.

LICOMCEN considers its March 24, 1998 letter as its final decision on FSI's claims, but declares that FSI's reply letter of April 15, 1998 is not the "notice to contest" required by GC-61 that authorizes resort to arbitration before the CIAC. It posits that nothing in FSI's April 15, 1998 letter states that FSI will avail of arbitration as a mode to settle its dispute with LICOMCEN. While FSI's final demand letter of March 14, 2001 mentioned its intention to refer the matter to arbitration, LICOMCEN declares that the letter was made three years after its March 24, 1998 letter, hence, long after the 30-day period provided in GC-61. Indeed, FSI filed the petition for arbitration with the CIAC only on October 2, 2002.[29] Considering FSI's delays in asserting its claims, LICOMCEN also contends that FSI's action is barred by laches.

With respect to the monetary claims of FSI, LICOMCEM alleges that the CA erred in upholding its liability for material costs at site for the reinforcing steel bars in the amount of ₱5,694,939.87, computed as follows:[30]

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[28] *Rollo* (G.R. No. 167022, Vol. I), p. 128.

[29] *Id.* at 65.

[30] *Rollo* (G.R. No. 167022, Vol. I), p. 76.

2nd initial rebar requirements purchased from Pag-Asa Steel Works, Inc.....	₱ 799,506.83
Reinforcing steel bars purchased from ARCA Industrial Sales (total net weight of 744,197.66 kilograms) – 50% of net amount due.....	5,395,433.04
Subtotal.....	6,194,939.87
Less	
Purchase cost of steel bars by Ramon Quinquileria.....	(500,000.00)
TOTAL LIABILITY OF LICOMCEN TO FSI FOR MATERIAL COSTS AT SITE.....	**5,694,939.87**

Citing GC-42(2) of the GCC, LICOMCEN says it shall be liable to pay FSI "[t]he cost of materials or goods **reasonably ordered for the Permanent or Temporary Works** which have been **delivered to the Contractor** but not yet used, and which delivery has been **certified by the Engineer**."[31] None of these requisites were allegedly complied with. It contends that FSI failed to establish that the steel bars delivered in Legaspi City, on January 14, 1998, were for the Citimall project. In fact, the steel bars were delivered not at the site of the Citimall project, but at FSI's batching plant called Tuanzon compound, a few hundred meters from the site. Even if delivery to Tuanzon was allowed, the delivery was done in violation of ESCA's instruction to ship only 50% of the materials. Advised as early as December 1997 to suspend the works, FSI proceeded with the delivery of the steel bars in January 1998. LICOMCEN declared that it should not be made to pay for costs that FSI willingly incurred for itself.[32]

Assuming that LICOMCEN is liable for the costs of the steel bars, it argues that its liability should be minimized by the fact that FSI incurred no actual damage from the purchase and delivery of the steel bars. During the suspension of the works, FSI sold 125,000 kg of steel bars for ₱500,000.00 to a third person (a certain Ramon Quinquileria). LICOMCEN alleges that FSI sold the steel bars for a ridiculously low price of ₱ 4.00/kilo,

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[31] *Id.* at 147.

[32] *Rollo* (G.R. No. 167022, Vol. II), pp. 1938-1943.

when the prevailing rate was ₱20.00/kilo. The sale could have garnered a higher price that would offset LICOMCEN's liability. LICOMCEN also wants FSI to account for and deliver to it the remaining 744 metric tons of steel bars not sold. Otherwise, FSI would be unjustly enriched at LICOMCEN's expense, receiving payment for materials not delivered to LICOMCEN.[33]

LICOMCEN also disagrees with the CA ruling that declared it solely liable to pay the costs of arbitration. The ruling was apparently based on the finding that LICOMCEN's "failure or refusal to meet its obligations, legal, financial, and moral, caused FSI to bring the dispute to arbitration."[34] LICOMCEN asserts that it was FSI's decision to proceed with the delivery of the steel bars that actually caused the dispute; it insists that it is not the party at fault which should bear the arbitration costs.[35]

FSI's Arguments

FSI takes exception to the CA ruling that modified the amount for material costs at site, and deleted the awards for equipment and labor standby costs and unrealized profits.

Proof of damage to FSI is not required for LICOMCEN to be liable for the material costs of the steel bars. Under GC-42, it is enough that the materials were delivered to the contractor, although not used. FSI said that the 744 metric tons of steel bars were ordered and paid for by it for the Citimall project as early as November 1997. If LICOMCEN contends that these were procured for other projects FSI also had in Legaspi City, it should have presented proof of this claim, but it failed to do so.[36]

ESCA's January 6, 1998 letter simply *suggested* that only 50% of the steel bars be shipped to Legaspi City; it was not a clear and specific directive. Even if it was, the steel bars were

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[33] *Id.* at 1944-1946.

[34] *Rollo* (G.R. No. 167022, Vol. I), page 80.

[35] *Rollo* (G.R. No. 167022, Vol. II), pp. 1948-1949.

[36] *Id.* at 1981-1986.

ordered and paid for long before the notice to suspend was given; by then, it was too late to stop the delivery. FSI also claims that since it believed in good faith that the Citimall project was simply suspended, it expected work to resume soon after and decided to proceed with the shipment.[37]

Contrary to LICOMCEN's arguments, GC-42 of the GCC does not require delivery of the materials *at the site of the Citimall project*; it only requires delivery *to the contractor*, which is FSI. Moreover, the Tuanzon compound, where the steel bars were actually delivered, is very close to the Citimall project site. FSI contends that it is a normal construction practice for contractors to set up a "staging site," to prepare the materials and equipment to be used, rather than stock them in the crowded job/project site. FSI also asserts that it was useless to have the delivery certified by ESCA because by then the Citimall project had been suspended. It would be unfair to demand FSI to perform an act that ESCA and LICOMCEN themselves had prevented from happening.[38]

The CA deleted the awards for equipment and labor standby costs on the ground that FSI's documentary evidence was inadequate. FSI finds the ruling erroneous, since LICOMCEN never questioned the list of employees and equipments employed and rented by FSI for the duration of the suspension.[39]

FSI also alleges that LICOMCEN maliciously and unlawfully suspended the Citimall project. While LICOMCEN cited several other cases in its petition for review on *certiorari* as grounds for suspending the works, its letters/notices of suspension only referred to one case, OMB-ADM-1-97-0622, an administrative case before the Ombudsman that was dismissed as early as October 12, 1998. LICOMCEN never notified FSI of the dismissal of this case. More importantly, no restraining order or injunction was issued in any of these cases to justify the suspension of the

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[37] *Ibid.*

[38] *Id.* at 1987.

[39] *Id.* at 2141-2145.

Citimall project.[40] FSI posits that LICOMCEN's true intent was to terminate its contract with it, but, to avoid paying damages for breach of contract, simply declared it as "indefinitely suspended." That LICOMCEN conducted another public bidding for the "new designs" is a telling indication of LICOMCEN's intent to ease out FSI.[41] Thus, FSI states that LICOMCEN's bad faith in indefinitely suspending the Citimall project entitles it to claim unrealized profit. The restriction under GC-41 that "[t]he contractor shall have no claim for anticipated profits on the work thus terminated,"[42] will not apply because the stipulation refers to a contract lawfully and properly terminated. FSI seeks to recover unrealized profits under Articles 1170 and 2201 of the Civil Code.

THE COURT'S RULING

The jurisdiction of the CIAC

The CIAC was created through Executive Order No. 1008 (*E.O. 1008*), in recognition of the need to establish an arbitral machinery that would expeditiously settle construction industry disputes. The prompt resolution of problems arising from or connected with the construction industry was considered of necessary and vital for the fulfillment of national development goals, as the construction industry provides employment to a large segment of the national labor force and is a leading contributor to the gross national product.[43] Section 4 of E.O. 1008 states:

> Sec. 4. *Jurisdiction*. **The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof.** These disputes may involve government or private contracts.

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[40] *Id.* at 2015-2016.

[41] *Id.* at 1996.

[42] *Id.* (G.R. No. 167022, Vol. I), p. 146.

[43] E.O. 1008 (1985), Whereas clauses.

For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law.[44] It cannot be fixed by the will of the parties to a dispute;[45] the parties can neither expand nor diminish a tribunal's jurisdiction by stipulation or agreement. The text of Section 4 of E.O. 1008 is broad enough to cover *any dispute arising from, or connected with construction contracts*, whether these involve mere contractual money claims or execution of the works.[46] Considering the intent behind the law and the broad language adopted, LICOMCEN erred in insisting on its restrictive interpretation of GC-61. The CIAC's jurisdiction cannot be limited by the parties' stipulation that only disputes in connection with or arising out of the physical construction activities (*execution of the works*) are arbitrable before it.

In fact, **all that is required for the CIAC to acquire jurisdiction is for the parties to a construction contract to agree to submit their dispute to arbitration.** Section 1, Article III

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[44] *BF Homes, Inc., et al. v. Manila Electric Company*, G.R. No. 171624, December 6, 2010, citing *Civil Service Commission v. Albao*, G.R. No. 155784, October 13, 2005, 472 SCRA 548, 555.

[45] *Municipality of Sogod v. Rosal*, G.R. Nos. 38204 and 38205, September 24, 1991, 201 SCRA 632.

[46] "E.O. No. 1008 does not distinguish between claims involving payment of money or not," *Excellent Quality Apparel, Inc. v. Win Multi-Rich Builders, Inc.*, G.R. No. 175048, February 10, 2009, 578 SCRA 272, 280, citing C. Parlade, *The Law and Practice of Conciliation and Arbitration of Construction Disputes* (2001 ed.), p. 89.

of the 1988 CIAC Rules of Procedure (as amended by CIAC Resolution Nos. 2-91 and 3-93) states:

> Section 1. *Submission to CIAC Jurisdiction*. – **An arbitration clause in a construction contract** or a submission to arbitration of a construction dispute **shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission.** When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC.
>
> An arbitration agreement or a submission to arbitration shall be in writing, but it need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration.

In *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corporation*,[47] the Court declared that "the bare fact that the parties x x x incorporated an arbitration clause in [their contract] is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties. **The arbitration clause in the construction contract *ipso facto* vested the CIAC with jurisdiction**."

Under GC-61 and GC-05 of the GCC, read singly and in relation with one another, the Court sees no intent to limit resort to arbitration only to disputes relating to the physical construction activities.

First, consistent with the intent of the law, an arbitration clause pursuant to E.O. 1008 should be interpreted at its widest signification. Under GC-61, the voluntary arbitration clause covers *any dispute of any kind*, not only arising of out the execution of the works but also *in connection therewith*. The payments, demand and disputed issues in this case – namely, work billings, material costs, equipment and labor standby costs, unrealized profits – all arose because of the construction activities

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[47] G.R. No. 180640, April 24, 2009, 586 SCRA 746, 760-761.

and/or are connected or related to these activities. In other words, they are there because of the construction activities. Attorney's fees and interests payment, on the other hand, are costs directly incidental to the dispute. Hence, the scope of the arbitration clause, as worded, covers all the disputed items.

Second and more importantly, in insisting that contractual money claims can be resolved only through court action, LICOMCEN deliberately ignores one of the exceptions to the general rule stated in GC-05:

GC-05. JURISDICTION

Any question between the contracting parties that may arise out of or in connection with the Contract, or breach thereof, shall be litigated in the courts of Legaspi City except where otherwise specifically stated or **except when such question is submitted for settlement thru arbitration as provided herein**.

The second exception clause authorizes the submission to arbitration of any dispute between LICOMCEN and FSI, even if the dispute does not directly involve the execution of physical construction works. This was precisely the avenue taken by FSI when it filed its petition for arbitration with the CIAC.

If the CIAC's jurisdiction can neither be enlarged nor diminished by the parties, it also cannot be subjected to a condition precedent. GC-61 requires a party disagreeing with LICOMCEN's decision to "officially give notice to contest such decision ***through arbitration***" within 30 days from receipt of the decision. However, FSI's April 15, 1998 letter is not the notice contemplated by GC-61; it never mentioned FSI's plan to submit the dispute to arbitration and instead requested LICOMCEN to reevaluate its claims. Notwithstanding FSI's failure to make a proper and timely notice, LICOMCEN's decision (embodied in its March 24, 1998 letter) cannot become "final and binding" so as to preclude resort to the CIAC arbitration. To reiterate, all that is required for the CIAC to acquire jurisdiction is for the parties to agree to submit their dispute to voluntary arbitration:

[T]he mere existence of an arbitration clause in the construction contract is considered by law as an agreement by the parties to submit existing or future controversies between them to CIAC jurisdiction*, without any qualification or condition precedent.* To affirm a condition precedent in the construction contract, which would effectively suspend the jurisdiction of the CIAC until compliance therewith, would be in conflict with the recognized intention of the law and rules to automatically vest CIAC with jurisdiction over a dispute should the construction contract contain an arbitration clause.[48]

The CIAC is given the **original and exclusive jurisdiction** over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines.[49] This jurisdiction cannot be altered by stipulations restricting the nature of construction disputes, appointing another arbitral body, or making that body's decision final and binding.

The jurisdiction of the CIAC to resolve the dispute between LICOMCEN and FSI is, therefore, affirmed.

The validity of the indefinite suspension of the works on the Citimall project

Before the Court rules on each of FSI's contractual monetary claims, we deem it important to discuss the validity of LICOMCEN's indefinite suspension of the works on the Citimall project. We quote below two contractual stipulations relevant to this issue:

GC-38. SUSPENSION OF WORKS

The Engineer [ESCA] through the LICOMCEN, INCORPORATED shall have the authority to suspend the Works wholly or partly by written order for such period as may be deemed necessary, **due** to unfavorable weather or other conditions considered unfavorable for the prosecution of the Works, or for failure on the part of the Contractor to correct work conditions which are unsafe

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[48] *Id.* at 763.

[49] E.O. 1008, Section 4.

for workers or the general public, or failure or refusal to carry out valid orders, or due to change of plans to suit field conditions as found necessary during construction, or **to other factors or causes which, in the opinion of the Engineer, is necessary in the interest of the Works and to the LICOMCEN, INCORPORATED. The Contractor [FSI] shall immediately comply with such order to suspend the work wholly or partly directed.**

In case of total suspension or suspension of activities along the critical path of the approved PERT/CPM network and the cause of which is not due to any fault of the Contractor, **the elapsed time between the effective order for suspending work and the order to resume work shall be allowed the Contractor by adjusting the time allowed for his execution of the Contract Works.**

The Engineer through LICOMCEN, INCORPORATED shall issue the order lifting the suspension of work when conditions to resume work shall have become favorable or the reasons for the suspension have been duly corrected.[50]

GC-41 LICOMCEN, INCORPORATED's RIGHT TO SUSPEND WORK OR TERMINATE THE CONTRACT

x x x x x x x x x

2. For Convenience of LICOMCEN, INCORPORATED

If any time before completion of work under the Contract it shall be found by the LICOMCEN, INCORPORATED that reasons beyond the control of the parties render it impossible or **against the interest of the LICOMCEN, INCORPORATED to complete the work**, **the LICOMCEN, INCORPORATED at any time, by written notice to the Contractor, may discontinue the work and terminate the Contract** in whole or in part. Upon the issuance of such notice of termination, the Contractor shall discontinue to work in such manner, sequence and at such time as the LICOMCEN, INCORPORATED/Engineer may direct, continuing and doing after said notice only such work and only until such time or times as the LICOMCEN, INCORPORATED/Engineer may direct.[51]

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[50] *Rollo* (G.R. No. 167022, Vol. I), p. 144.

[51] *Id.* at 146.

Under these stipulations, **we consider LICOMCEN's *initial suspension* of the works valid.** GC-38 authorizes the suspension of the works for factors or causes which ESCA deems necessary in the interests of the works and LICOMCEN. The factors or causes of suspension may pertain to a change or revision of works, as cited in the December 16, 1997 and January 6, 1998 letters of ESCA, or to the pendency of a case before the Ombudsman (OMB-ADM-1-97-0622), as cited in LICOMCEN's January 15, 1998 letter and ESCA's January 19, 1998 and February 17, 1998 letters. It was not necessary for ESCA/LICOMCEN to wait for a restraining or injunctive order to be issued in any of the cases filed against LICOMCEN before it can suspend the works. The language of GC-38 gives ESCA/LICOMCEN sufficient discretion to determine whether the existence of a particular situation or condition necessitates the suspension of the works and serves the interests of LICOMCEN.

Although we consider the initial suspension of the works as valid, we find that LICOMCEN wrongfully prolonged the suspension of the works (or "indefinite suspension" as LICOMCEN calls it). GC-38 requires ESCA/LICOMCEN to "issue an order lifting the suspension of work when conditions to resume work shall have become favorable or the reasons for the suspension have been duly corrected." The Ombudsman case (OMB-ADM-1-97-0622), which ESCA and LICOMCEN cited in their letters to FSI as a ground for the suspension, was dismissed as early as October 12, 1998, but neither ESCA nor LICOMCEN informed FSI of this development. The pendency of the other cases[52] may justify the continued suspension of the works, but LICOMCEN never bothered to inform FSI of the existence of these cases until the arbitration proceedings commenced. By May 28, 2002, the City Government of Legaspi sent LICOMCEN a notice instructing it to proceed with the Citimall project;[53] again, LICOMCEN failed to relay this information to FSI. Instead, LICOMCEN conducted a rebidding

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[52] LICOMCEN cites OMB-ADM-1-98-2015, and Civil Case Nos. 10109 and 10093; *id.* at 20-22.

[53] *Id.* at 745.

of the Citimall project based on the new design.[54] LICOMCEN's claim that the rebidding was conducted merely to get cost estimates for the new design goes against the established practice in the construction industry. We find the CIAC's discussion on this matter relevant:

> But what is more appalling and disgusting is the allegation x x x that the x x x invitation to bid was issued x x x solely to gather cost estimates on the redesigned [Citimall project] x x x. This Arbitral Tribunal finds said **act of asking for bids, without any intention of awarding the project to the lowest and qualified bidder, if true, to be extremely irresponsible and highly unprofessional**. It might even be branded as fraudulent x x x [since] the invited bidders [were required] to pay ₱2,000.00 each for a set of the new plans, which amount was non-refundable. The presence of x x x deceit makes the whole story repugnant and unacceptable.[55]

LICOMCEN's omissions and the imprudent rebidding of the Citimall project are telling indications of LICOMCEN's intent to ease out FSI and terminate their contract. As with GC-31, GC-42(2) grants LICOMCEN ample discretion to determine what reasons render it against its interest to complete the work – in this case, the pendency of the other cases and the revised designs for the Citimall project. Given this authority, the Court fails to see the logic why LICOMCEN had to resort to an "indefinite suspension" of the works, instead of outrightly terminating the contract in exercise of its rights under GC-42(2).

We now proceed to discuss the effects of these findings with regard to FSI's monetary claims against LICOMCEN.

The claim for material costs at site

GC-42 of the GCC states:

GC-42 PAYMENT FOR TERMINATED CONTRACT

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[54] The Invitation to Bid was dated October 1, 2002; *id.* at 221.

[55] *Id.* at 902.

If the Contract is terminated as aforesaid, the Contractor will be paid for all items of work executed, satisfactorily completed and accepted by the LICOMCEN, INCORPORATED up to the date of termination, at the rates and prices provided for in the Contract and in addition:

1. The cost of partially accomplished items of additional or extra work agreed upon by the LICOMCEN, INCORPORATED and the Contractor.

2. **The cost of materials or goods reasonably ordered for the Permanent or Temporary Works which have been delivered to the Contractor but not yet used and which delivery has been certified by the Engineer.**

3. The reasonable cost of demobilization

For any payment due the Contractor under the above conditions, the LICOMCEN, INCORPORATED, however, shall deduct any outstanding balance due from the Contractor for advances in respect to mobilization and materials, and any other sum the LICOMCEN, INCORPORATED is entitled to be credited.[56]

For LICOMCEN to be liable for the cost of materials or goods, item two of GC-42 requires that

a. the materials or goods were reasonably ordered for the Permanent or Temporary Works;

b. the materials or goods were delivered to the Contractor but not yet used; and

c. the delivery was certified by the Engineer.

Both the CIAC and the CA agreed that these requisites were met by FSI to make LICOMCEN liable for the cost of the steel bars ordered for the Citimall project; the two tribunals differed only to the extent of LICOMCEN's liability because the CA opined that it should be limited only to 50% of the cost of the steel bars. A review of the records compels us to uphold the CA's finding.

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[56] *Id.* at 146-147.

Prior to the delivery of the steel bars, ESCA informed FSI of the suspension of the works; ESCA's January 6, 1998 letter reads:

> **As per our information to you on December 16, 1997,** a major revision in the design of the Legaspi Citimall necessitated a change in the bored piles requirement of the project. The **change involved a substantial reduction in the number and length of piles.**
>
> **We expected that you would have suspended the deliveries of the steel bars until the new design has been approved.**
>
> **According to you[,] the steel bars had already been paid and loaded and out of Manila on said date.**
>
> In order **to avoid double handling, storage, security problems, we suggest that only 50% of the total requirement of steel bars be delivered at jobsite.** The balance should be returned to Manila where storage and security is better.
>
> In order for us to consider additional cost due to the shipping of the excess steel bars, we need to know the actual dates of purchase, payments and loading of the steel bars. Obviously, we cannot consider the additional cost if you have had the chance to delay the shipping of the steel bars.[57]

From the above, it appears that FSI was informed of the necessity of suspending the works as early as December 16, 1997. Pursuant to GC-38 of the GCC, FSI was expected to *immediately comply* with the order to suspend the work.[58] Though ESCA's December 16, 1997 notice may not have been categorical in ordering the suspension of the works, FSI's reply letter of December 18, 1997 indicated that it actually complied with the notice to suspend, as it said, "We hope for the early resolution of the new foundation plan and the resumption of work."[59] Despite the suspension, FSI claimed that it could not stop the delivery of the steel bars (nor found the need to do so) because (a) the steel bars were ordered as early as November 1997

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[57] *Id.* at 260.

[58] *Id.* at 144.

[59] *Id.* at 203.

and were already loaded in Manila and expected to arrive in Legaspi City by December 23, 1997, and (b) it expected immediate resumption of work to meet the 90-day deadline.[60]

Records, however, disclose that these claims are not entirely accurate. The memorandum of agreement and sale covering the steel bars specifically stated that these would be withdrawn from the Cagayan de Oro depot, not Manila[61]; indeed, the bill of lading stated that the steel bars were loaded in Cagayan de Oro on January 11, 1998, and arrived in Legaspi City *within three days*, on January 14, 1998.[62] The loading and delivery of the steel bar thus happened after FSI received ESCA's December 16, 1997 and January 6, 1998 letters – days after the instruction to suspend the works. Also, the same stipulation that authorizes LICOMCEN to suspend the works allows the extension of the period to complete the works. The relevant portion of GC-38 states:

> In case of total suspension x x x and the cause of which is not due to any fault of the Contractor [FSI], **the elapsed time between the effective order for suspending work and the order to resume work shall be allowed the Contractor by adjusting the time allowed for his execution of the Contract Works.**[63]

The above stipulation, coupled with the short period it took to ship the steel bars from Cagayan de Oro to Legaspi City, thus negates both FSI's argument and the CIAC's ruling[64] that there

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[60] *Rollo* (G.R. No. 167022, Vol. II), pp. 2137-2138.

[61] *Rollo* (G.R. No. 167022, Vol. I), p. 732.

[62] *Id.* at 261.

[63] *Supra* note 58.

[64] *Rollo* (G.R. No. 167022, Vol. I), p. 903, the CIAC's decision states:

> According to [Licomcen], FSI acted unreasonably by allowing the rebars to be shipped to Legaspi City notwithstanding the suspension of the project. This argument holds no water. First of all, since the project was supposedly simply suspended, FSI had every reason to expect work thereon to be resumed after a short time. **There was, therefore, no necessity then for it to stop the shipment of the rebars.** Furthermore, **the stipulated period of construction is only ninety (90) days. Because said period is quite**

was no necessity to stop the shipment so as to meet the 90-day deadline. These circumstances prove that FSI acted imprudently in proceeding with the delivery, contrary to LICOMCEN's instructions. The CA was correct in holding LICOMCEN liable for only 50% of the costs of the steel bars delivered.

The claim for equipment and labor standby costs

The Court upholds the CA's ruling deleting the award for equipment and labor standby costs. We quote in agreement pertinent portions of the CA decision:

> The CIAC relied solely on the list of 37 pieces of equipment respondent allegedly rented and maintained at the construction site during the suspension of the project with the prorated rentals incurred x x x. To the mind of this Court, **these lists are not sufficient to establish the fact that indeed [FSI] incurred the said expenses**. Reliance on said lists is purely speculative x x x **the list of equipments is a mere index or catalog of the equipments, which may be utilized at the construction site. It is not the best evidence to prove that said equipment were in fact rented** and maintained at the construction site during the suspension of the work. x x x **[FSI] should have presented the lease contracts or any similar documents such as receipts of payments** x x x. **Likewise, the list of employees does not in anyway prove that those employees** in the list were indeed at the construction site or were required to be on call should their services be needed and **were being paid their salaries during the suspension of the project. Thus, in the absence of sufficient evidence, We deny the claim for equipment and labor standby costs.**[65]

The claim for unrealized profit

FSI contends that it is not barred from recovering unrealized profit under GC-41(2), which states:

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short, FSI cannot be faulted in ordering the remaining rebars needed for the project ahead of their scheduled use, since these had to be shipped from Cagayan de Oro.

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

GC-41. LICOMCEN, INCORPORATED's RIGHT TO SUSPEND WORK OR TERMINATE THE CONTRACT

x x x x x x x x x

2. For Convenience of the LICOMCEN, INCORPORATED

x x x. The Contractor [FSI] shall not claim damages for such discontinuance or termination of the Contract, but the Contractor shall receive compensation for reasonable expenses incurred in good faith for the performance of the Contract and for reasonable expenses associated with termination of the Contract. The LICOMCEN, INCORPORATED will determine the reasonableness of such expenses. **The Contractor [FSI] shall have no claim for anticipated profits on the work thus terminated, nor any other claim,** except for the work actually performed at the time of complete discontinuance, including any variations authorized by the LICOMCEN, INCORPORATED/Engineer to be done.

The prohibition, FSI posits, applies only where the contract was properly and lawfully terminated, which was not the case at bar. FSI also took pains in differentiating its claim for "unrealized profit" from the prohibited claim for "anticipated profits"; supposedly, unrealized profit is "one that is built-in in the contract price, while anticipated profit is not." We fail to see the distinction, considering that the contract itself neither defined nor differentiated the two terms. [A] contract must be interpreted from the language of the contract itself, according to its plain and ordinary meaning."[66] If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of the stipulations shall control.[67]

Nonetheless, on account of our earlier discussion of LICOMCEN's failure to observe the proper procedure in terminating the contract by declaring that it was merely indefinitely suspended, we deem that FSI is entitled to the payment of nominal damages. Nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the

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[66] *Adriatico Consortium, Inc. v. Land Bank of the Philippines*, G.R. No. 187838, December 23, 2009, 609 SCRA 403, 418.

[67] CIVIL CODE, Article 1370.

defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him.[68] Its award is, thus, not for the purpose of indemnification for a loss but for the recognition and vindication of a right. A violation of the plaintiff's right, even if only technical, is sufficient to support an award of nominal damages.[69] FSI is entitled to recover the amount of ₱100,000.00 as nominal damages.

The liability for costs of arbitration

Under the parties' Terms of Reference, executed before the CIAC, the costs of arbitration shall be equally divided between them, subject to the CIAC's determination of which of the parties shall eventually shoulder the amount.[70] The CIAC eventually ruled that since LICOMCEN was the party at fault, it should bear the costs. As the CA did, we agree with this finding. Ultimately, it was LICOMCEN's imprudent declaration of indefinitely suspending the works that caused the dispute between it and FSI. LICOMCEN should bear the costs of arbitration.

WHEREFORE, premises considered, the petition for review on *certiorari* of LICOMCEN INCORPORATED, docketed as G.R. No. 167022, and the petition for review on *certiorari* of FOUNDATION SPECIALISTS, INC., docketed as G.R. No. 169678, are *DENIED*. The November 23, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 78218 is *MODIFIED to include the award of nominal damages* in favor of FOUNDATION SPECIALISTS, INC. Thus, LICOMCEN INCORPORATED is ordered to pay FOUNDATION SPECIALISTS, INC. the following amounts:

a. ₱1,264,404.12 for unpaid balance on FOUNDATION SPECIALISTS, INC. billings;

b. ₱5,694,939.87 for material costs at site; and

c. ₱100,000.00 for nominal damages.

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[68] *Id.*, Article 2221.

[69] *Almeda v. Cariño*, G.R. No. 152143, January 13, 2003, 395 SCRA 144.

[70] *Rollo* (G.R. No. 167022, Vol. II), p. 1366.

LICOMCEN INCORPORATED is also ordered to pay the costs of arbitration. No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 171406. April 4, 2011]

ASIAN TERMINALS, INC., *petitioner, vs.* **MALAYAN INSURANCE CO., INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES OR GROUNDS NOT RAISED BELOW CANNOT BE RESOLVED ON REVIEW BY THE SUPREME COURT.— Petitioner claims that respondent's non-presentation of the insurance contract or policy between the respondent and the consignee is fatal to its cause of action. We do not agree. First of all, this was never raised as an issue before the RTC. In fact, it is not among the issues agreed upon by the parties to be resolved during the pre-trial. As we have said, "the determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal." Thus, "[t]he parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. x x x The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same." Neither was this issue raised on appeal. Basic is the rule that "issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the

parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process."

2. ID.; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, AFFIRMING THE TRIAL COURT, ARE CONCLUSIVE AND BINDING.— Petitioner's attempt to absolve itself from liability must likewise fail. Only questions of law are allowed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Thus, it is not our duty "to review, examine, and evaluate or weigh all over again the probative value of the evidence presented," especially where the findings of both the trial court and the appellate court coincide on the matter. As we have often said, factual findings of the CA affirming those of the RTC are conclusive and binding, except in the following cases: "(1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the [CA] is based on misapprehension of facts; (5) when the [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the [CA] manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the [CA] are premised on the absence of evidence and are contradicted by the evidence on record." None of these are availing in the present case.

3. ID.; ID.; ID.; NO REASON TO DISTURB THE TRIAL AND APPELLATE COURT'S FINDING OF NEGLIGENCE ON THE PART OF PETITIONER'S STEVEDORES WHICH IS SUPPORTED BY BOTH TESTIMONIAL AND DOCUMENTARY EVIDENCE.— Both the RTC and the CA found the negligence of petitioner's stevedores to be the proximate cause of the damage/loss to the shipment. In disregarding the contention of petitioner that such finding is contrary to the documentary evidence, the CA had this to say: ATI, however, contends that the finding of the trial court was contrary to the documentary evidence of record, particularly, the Turn Over Survey of Bad Order Cargoes dated November 28,

1995, which was executed prior to the turn-over of the cargo by the carrier to the arrastre operator ATI, and which showed that the shipment already contained 2,702 damaged bags. We are not persuaded. Contrary to ATI's assertion, **witness Redentor Antonio**, marine cargo surveyor of Inchcape for the vessel Jinlian I which arrived on November 21, 1995 and up to completion of discharging on November 28, 1995, **testified that it was only after all the bags were unloaded from the vessel that the actual counting of bad order bags was made,** thus: x x x **The above testimony of Redentor Antonio was corroborated by Edgar Liceralde,** marine cargo surveyor connected with SMS Average Surveyors and Adjusters, Inc., the company requested by consignee Chemphil Albright and Wilson Corporation to provide superintendence, report the condition and determine the final outturn of quantity/weight of the subject shipment. x x x Defendant-appellant ATI, for its part, presented its claim officer as witness who testified that a survey was conducted by the shipping company and ATI before the shipment was turned over to the possession of ATI and that the Turn Over Survey of Bad Order Cargoes was prepared by ATI's Bad Order (BO) Inspector. **Considering that the shipment arrived on November 21, 1998 and the unloading operation commenced on said date and was completed on November 26, 1998, while the Turn Over Survey of Bad Order Cargoes, reflecting a figure of 2,702 damaged bags, was prepared and signed on November 28, 1998** by ATI's BO Inspector and co-signed by a representative of the shipping company, **the trial court's finding that the damage to the cargoes was due to the improper handling thereof by ATI's stevedores cannot be said to be without substantial support from the records.** x x x We find no reason to disagree with the trial court's conclusion. Indeed, from the nature of the [damage] caused to the shipment, *i.e.*, torn bags, spillage of contents and hardened or caked portions of the contents, it is not difficult to see that the damage caused was due to the negligence of ATI's stevedores who used steel hooks to retrieve the bags from the higher portions of the piles thereby piercing the bags and spilling their contents, and who piled the bags in the open storage area of ATI with insufficient cover thereby exposing them to the elements and [causing] the contents to cake or harden. Clearly, the finding of negligence on the part

of petitioner's stevedores is supported by both testimonial and documentary evidence. Hence, we see no reason to disturb the same.

4. ID.; EVIDENCE; JUDICIAL NOTICE; DOES NOT APPLY IN CASE AT BAR; THE MANAGEMENT CONTRACT ENTERED INTO BY PETITIONER AND THE PHILIPPINE PORTS AUTHORITY IS NOT CONSIDERED AN OFFICIAL ACT OF THE EXECUTIVE DEPARTMENT AND CLEARLY NOT AMONG THE MATTERS WHICH COURTS CAN TAKE JUDICIAL NOTICE OF.— Petitioner implores us to take judicial notice of Section 7.01, Article VII of the Management Contract for cargo handling services it entered with the PPA, which limits petitioner's liability to ₱5,000.00 per package. Unfortunately for the petitioner, it cannot avail of judicial notice. Sections 1 and 2 of Rule 129 of the Rules of Court provide that: SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. SEC. 2. *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration or ought to be known to judges because of their judicial functions. The Management Contract entered into by petitioner and the PPA is clearly not among the matters which the courts can take judicial notice of. It cannot be considered an official act of the executive department. The PPA, which was created by virtue of Presidential Decree No. 857, as amended, is a government-owned and controlled corporation in charge of administering the ports in the country. Obviously, the PPA was only performing a proprietary function when it entered into a Management Contract with petitioner. As such, judicial notice cannot be applied.

5. MERCANTILE LAW; INSURANCE; NON-PRESENTATION OF THE INSURANCE CONTRACT OR POLICY IS NOT

FATAL IN CASE AT BAR; SINCE THERE WAS NO ISSUE REGARDING THE VALIDITY OF THE INSURANCE CONTRACT OR POLICY, OR ANY PROVISION THEREOF, RESPONDENT HAD NO REASON TO PRESENT THE INSURANCE CONTRACT OR POLICY AS EVIDENCE DURING THE TRIAL.— Non-presentation of the insurance contract or policy is not necessarily fatal. In *Delsan Transport Lines, Inc. v. Court of Appeals,* we ruled that: Anent the second issue, it is our view and so hold that **the presentation in evidence of the marine insurance policy is not indispensable** in this case **before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, is sufficient to establish not only the relationship of herein private respondent as insurer and Caltex, as the assured shipper of the lost cargo of industrial fuel oil, but also the amount paid to settle the insurance claim. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim.** x x x. In *International Container Terminal Services, Inc. v. FGU Insurance Corporation,* we used the same line of reasoning in upholding the Decision of the CA finding the arrastre contractor liable for the lost shipment despite the failure of the insurance company to offer in evidence the insurance contract or policy. x x x Similarly, in this case, the presentation of the insurance contract or policy was not necessary. Although petitioner objected to the admission of the Subrogation Receipt in its Comment to respondent's formal offer of evidence on the ground that respondent failed to present the insurance contract or policy, a perusal of petitioner's Answer and Pre-Trial Brief shows that petitioner never questioned respondent's right to subrogation, nor did it dispute the coverage of the insurance contract or policy. Since there was no issue regarding the validity of the insurance contract or policy, or any provision thereof, respondent had no reason to present the insurance contract or policy as evidence during the trial.

APPEARANCES OF COUNSEL

Cruz Capule Marcon & Nabaza Law Offices for petitioner.
Tumangan Payumo & Partners for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Once the insurer pays the insured, equity demands reimbursement as no one should benefit at the expense of another.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the July 14, 2005 Decision[2] and the February 14, 2006 Resolution[3] of the Court of Appeals (CA) in CA G.R. CV No. 61798.

Factual Antecedents

On November 14, 1995, Shandong Weifang Soda Ash Plant shipped on board the vessel MV "Jinlian I" 60,000 plastic bags of soda ash dense (each bag weighing 50 kilograms) from China to Manila.[4] The shipment, with an invoice value of US$456,000.00, was insured with respondent Malayan Insurance Company, Inc. under Marine Risk Note No. RN-0001-21430, and covered by a Bill of Lading issued by Tianjin Navigation Company with Philippine Banking Corporation as the consignee and Chemphil Albright and Wilson Corporation as the notify party.[5]

On November 21, 1995, upon arrival of the vessel at Pier 9, South Harbor, Manila,[6] the stevedores of petitioner Asian Terminals, Inc., a duly registered domestic corporation engaged in providing arrastre and stevedoring services,[7] unloaded the

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[1] *Rollo,* pp. 8-149, with Annexes "A" to "M" inclusive.

[2] *Id.* at 26-37; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes.

[3] *Id.* at 46-47.

[4] *Id.* at 27.

[5] *Id.*

[6] Records, p. 134.

[7] *Rollo,* p. 9.

60,000 bags of soda ash dense from the vessel and brought them to the open storage area of petitioner for temporary storage and safekeeping, pending clearance from the Bureau of Customs and delivery to the consignee.[8] When the unloading of the bags was completed on November 28, 1995, 2,702 bags were found to be in bad order condition.[9]

On November 29, 1995, the stevedores of petitioner began loading the bags in the trucks of MEC Customs Brokerage for transport and delivery to the consignee.[10] On December 28, 1995, after all the bags were unloaded in the warehouses of the consignee, a total of 2,881 bags were in bad order condition due to spillage, caking, and hardening of the contents.[11]

On April 19, 1996, respondent, as insurer, paid the value of the lost/ damaged cargoes to the consignee in the amount of ₱643,600.25.[12]

Ruling of the Regional Trial Court

On November 20, 1996, respondent, as subrogee of the consignee, filed before the Regional Trial Court (RTC) of Manila, Branch 35, a Complaint[13] for damages against petitioner, the shipper Inchcape Shipping Services, and the cargo broker MEC Customs Brokerage.[14]

After the filing of the Answers,[15] trial ensued.

On June 26, 1998, the RTC rendered a Decision[16] finding petitioner liable for the damage/loss sustained by the shipment

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[8] Records, pp. 134-135.

[9] *Rollo,* p. 28.

[10] Records, pp. 135-136.

[11] *Id.*

[12] *Rollo,* p. 28.

[13] *Id.* at 49-55.

[14] *Id.* at 28.

[15] Records, pp. 19-23, 24-30, and 31-35.

[16] *Rollo,* pp. 38-44; penned by Judge Ramon P. Makasiar.

but absolving the other defendants. The RTC found that the proximate cause of the damage/loss was the negligence of petitioner's stevedores who handled the unloading of the cargoes from the vessel.[17] The RTC emphasized that despite the admonitions of Marine Cargo Surveyors Edgar Liceralde and Redentor Antonio not to use steel hooks in retrieving and picking-up the bags, petitioner's stevedores continued to use such tools, which pierced the bags and caused the spillage.[18] The RTC, thus, ruled that petitioner, as employer, is liable for the acts and omissions of its stevedores under Articles 2176[19] and 2180 paragraph (4)[20] of the Civil Code.[21] Hence, the dispositive portion of the Decision reads:

> WHEREFORE, judgment is rendered ordering defendant Asian Terminal, Inc. to pay plaintiff Malayan Insurance Company, Inc. the sum of ₱643,600.25 plus interest thereon at legal rate computed from November 20, 1996, the date the Complaint was filed, until the principal obligation is fully paid, and the costs.
>
> The complaint of the plaintiff against defendants Inchcape Shipping Services and MEC Customs Brokerage, and the counterclaims of said defendants against the plaintiff are dismissed.
>
> SO ORDERED.[22]

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[17] *Id.* at 39.

[18] *Id.* at 39-43.

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

[20] 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.

x x x x x x x x x

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

[21] *Rollo,* p. 43.

[22] *Id.* at 44.

Ruling of the Court of Appeals

Aggrieved, petitioner appealed[23] to the CA but the appeal was denied. In its July 14, 2005 Decision, the CA agreed with the RTC that the damage/loss was caused by the negligence of petitioner's stevedores in handling and storing the subject shipment.[24] The CA likewise rejected petitioner's assertion that it received the subject shipment in bad order condition as this was belied by Marine Cargo Surveyors Redentor Antonio and Edgar Liceralde, who both testified that the actual counting of bad order bags was done only after all the bags were unloaded from the vessel and that the Turn Over Survey of Bad Order Cargoes (TOSBOC) upon which petitioner anchors its defense was prepared only on November 28, 1995 or after the unloading of the bags was completed.[25] Thus, the CA disposed of the appeal as follows:

> WHEREFORE, premises considered, the appeal is ***DENIED***. The assailed Decision dated June 26, 1998 of the Regional Trial Court of Manila, Branch 35, in Civil Case No. 96-80945 is hereby ***AFFIRMED*** in all respects.
>
> SO ORDERED.[26]

Petitioner moved for reconsideration[27] but the CA denied the same in a Resolution[28] dated February 14, 2006 for lack of merit.

Issues

Hence, the present recourse, petitioner contending that:

1. RESPONDENT-INSURER IS NOT ENTITLED TO THE RELIEF GRANTED AS IT FAILED TO ESTABLISH ITS CAUSE OF

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[23] *Id.* at 115-136.

[24] *Id.* at 36.

[25] *Id.* at 30-34.

[26] *Id.* at 36.

[27] *Id.* at 137-148.

[28] *Id.* at 47.

ACTION AGAINST HEREIN PETITIONER SINCE, AS THE ALLEGED SUBROGEE, IT NEVER PRESENTED ANY VALID, EXISTING, ENFORCEABLE INSURANCE POLICY OR ANY COPY THEREOF IN COURT.

2. THE HONORABLE COURT OF APPEALS ERRED WHEN IT OVERLOOKED THE FACT THAT THE TOSBOC & RESBOC WERE ADOPTED AS COMMON EXHIBITS BY BOTH PETITIONER AND RESPONDENT.

3. CONTRARY TO TESTIMONIAL EVIDENCE ON RECORD, VARIOUS DOCUMENTATIONS WOULD POINT TO THE VESSEL'S LIABILITY AS THERE IS, IN THIS INSTANT CASE, AN OVERWHELMING DOCUMENTARY EVIDENCE TO PROVE THAT THE DAMAGE IN QUESTION WERE SUSTAINED WHEN THE SHIPMENT WAS IN THE CUSTODY OF THE VESSEL.

4. THE HONORABLE COURT OF APPEALS ERRED WHEN IT ADJUDGED HEREIN DEFENDANT LIABLE DUE TO [THE] FACT THAT THE TURN OVER SURVEY OF BAD ORDER CARGOES (TOSBOC) WAS PREPARED ONLY AFTER THE COMPLETION OF THE DISCHARGING OPERATIONS OR ON NOVEMBER 28, 1995. THUS, CONCLUDING THAT DAMAGE TO THE CARGOES WAS DUE TO THE IMPROPER HANDLING THEREOF BY ATI STEVEDORES.

5. THE HONORABLE COURT OF APPEALS ERRED IN NOT TAKING JUDICIAL NOTICE OF THE CONTRACT FOR CARGO HANDLING SERVICES BETWEEN PPA AND ATI AND APPLYING THE PERTINENT PROVISIONS THEREOF AS REGARDS ATI'S LIABILITY.[29]

In sum, the issues are: (1) whether the non-presentation of the insurance contract or policy is fatal to respondent's cause of action; (2) whether the proximate cause of the damage/loss to the shipment was the negligence of petitioner's stevedores; and (3) whether the court can take judicial notice of the Management Contract between petitioner and the Philippine Ports Authority (PPA) in determining petitioner's liability.

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[29] *Id.* at 261.

Petitioner's Arguments

Petitioner contends that respondent has no cause of action because it failed to present the insurance contract or policy covering the subject shipment.[30] Petitioner argues that the Subrogation Receipt presented by respondent is not sufficient to prove that the subject shipment was insured and that respondent was validly subrogated to the rights of the consignee.[31] Thus, petitioner submits that without proof of a valid subrogation, respondent is not entitled to any reimbursement.[32]

Petitioner likewise puts in issue the finding of the RTC, which was affirmed by the CA, that the proximate cause of the damage/loss to the shipment was the negligence of petitioner's stevedores.[33] Petitioner avers that such finding is contrary to the documentary evidence, *i.e.*, the TOSBOC, the Request for Bad Order Survey (RESBOC) and the Report of Survey.[34] According to petitioner, these documents prove that it received the subject shipment in bad order condition and that no additional damage was sustained by the subject shipment under its custody.[35] Petitioner asserts that although the TOSBOC was prepared only after all the bags were unloaded by petitioner's stevedores, this does not mean that the damage/loss was caused by its stevedores.[36]

Petitioner also claims that the amount of damages should not be more than ₱5,000.00, pursuant to its Management Contract for cargo handling services with the PPA.[37] Petitioner contends that the CA should have taken judicial notice of the said contract

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[30] *Id.* at 262-268.

[31] *Id.* at 262.

[32] *Id.* at 268.

[33] *Id.* at 270.

[34] *Id.* at 268-286.

[35] *Id.*

[36] *Id.* at 283-286.

[37] *Id.* at 290.

since it is an official act of an executive department subject to judicial cognizance.[38]

Respondent's Arguments

Respondent, on the other hand, argues that the non-presentation of the insurance contract or policy was not raised in the trial court. Thus, it cannot be raised for the first time on appeal.[39] Respondent likewise contends that under prevailing jurisprudence, presentation of the insurance policy is not indispensable.[40] Moreover, with or without the insurance contract or policy, respondent claims that it should be allowed to recover under Article 1236[41] of the Civil Code.[42] Respondent further avers that "the right of subrogation has its roots in equity - it is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay."[43]

Respondent likewise maintains that the RTC and the CA correctly found that the damage/loss sustained by the subject shipment was caused by the negligent acts of petitioner's stevedores.[44] Such factual findings of the RTC, affirmed by the CA, are conclusive and should no longer be disturbed.[45] In

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[38] *Id.*

[39] *Id.* at 247.

[40] *Id.* at 250.

[41] Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

[42] *Rollo,* p. 251-252.

[43] *Id.* at 253.

[44] *Id.* at 242-244.

[45] *Id.* at 241.

fact, under Section 1[46] of Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*.[47]

As to the Management Contract for cargo handling services, respondent contends that this is outside the operation of judicial notice.[48] And even if it is not, petitioner's liability cannot be limited by it since it is a contract of adhesion.[49]

Our Ruling

The petition is bereft of merit.

Non-presentation of the insurance contract or policy is not fatal in the instant case

Petitioner claims that respondent's non-presentation of the insurance contract or policy between the respondent and the consignee is fatal to its cause of action.

We do not agree.

First of all, this was never raised as an issue before the RTC. In fact, it is not among the issues agreed upon by the parties to be resolved during the pre-trial.[50] As we have said,

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[46] Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[47] *Rollo*, pp. 245-246.

[48] *Id.* at 238-240.

[49] *Id.* at 240-241.

[50] III. ISSUES

1. Whether x x x the defendants are liable to pay the plaintiff the amount of US$456,000.00 representing the amount which plaintiff paid to the consignee;

"the determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal."[51] Thus, "[t]he parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. x x x The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same."[52]

Neither was this issue raised on appeal.[53] Basic is the rule that "issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process."[54]

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2. What is the extent of the damages sustained by the subject shipment?

3. Which of the defendants is liable to plaintiff for the alleged damages and the extent of liability?

4. Is the package limitation contract applicable in the instant case?

5. Under the Carriage of Goods by Sea [Act] (COGSA), is defendant Inchcape exempted from damages by virtue of the defense like insufficient packing, the very nature of the shipment.

6. Is the defendant Inchcape liable for any damage which may have arisen after the cargo was discharged from the vessel's hold or ship's docket in the case of *Ludo v. Binamira*, 101 Phil. 120;

7. Whether x x x defendant MEC broker had something to do with the unloading of the cargo from the carrier up to the terminal;

8. Whether x x x defendant MEC had any participation in the unloading of the cargo to the warehouse or the place of the consignee;

9. Whether x x x the alleged loss or damages to the cargo occurred while the shipper was in transit or after it was unloaded from the carrier;

10. Whether x x x defendants ATI, Inchcape and MEC are entitled to any form of damages, specifically the attorney's fees. (*Id.* at 66-67).

[51] *Villanueva v. Court of Appeals*, 471 Phil. 394, 406 (2004).

[52] *Id.* at 407.

[53] *Rollo*, p. 121.

[54] *Cuenco v. Talisay Tourist Sports Complex, Incorporated*, G.R. No. 174154, July 30, 2009, 594 SCRA 396, 399-400.

Besides, non-presentation of the insurance contract or policy is not necessarily fatal.[55] In *Delsan Transport Lines, Inc. v. Court of Appeals*,[56] we ruled that:

> Anent the second issue, it is our view and so hold that **the presentation in evidence of the marine insurance policy is not indispensable** in this case **before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, is sufficient to establish not only the relationship of herein private respondent as insurer and Caltex, as the assured shipper of the lost cargo of industrial fuel oil, but also the amount paid to settle the insurance claim. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim.**
>
> The presentation of the insurance policy was necessary in the case of *Home Insurance Corporation v. CA* (a case cited by petitioner) because the shipment therein (hydraulic engines) passed through several stages with different parties involved in each stage. First, from the shipper to the port of departure; second, from the port of departure to the M/S Oriental Statesman; third, from the M/S Oriental Statesman to the M/S Pacific Conveyor; fourth, from the M/S Pacific Conveyor to the port of arrival; fifth, from the port of arrival to the arrastre operator; sixth, from the arrastre operator to the hauler, Mabuhay Brokerage Co., Inc. (private respondent therein); and lastly, from the hauler to the consignee. We emphasized in that case that in the absence of proof of stipulations to the contrary, the hauler can be liable only for any damage that occurred from the time it received the cargo until it finally delivered it to the consignee. Ordinarily, it cannot be held responsible for the handling of the cargo before it actually received it. The insurance contract, which was not presented in evidence in that case would have indicated the scope of the insurer's liability, if any, since no evidence was adduced indicating at what stage in the handling process the damage to the cargo was sustained.[57] (Emphasis supplied.)

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[55] *Eastern Shipping Lines, Inc. v. Prudential Guarantee and Assurance*, Inc., G.R. No. 174116, September 11, 2009, 599 SCRA 565, 581.

[56] 420 Phil. 824. (2001).

[57] *Id.* at 835-836.

In *International Container Terminal Services, Inc. v. FGU Insurance Corporation*,[58] we used the same line of reasoning in upholding the Decision of the CA finding the arrastre contractor liable for the lost shipment despite the failure of the insurance company to offer in evidence the insurance contract or policy. We explained:

> Indeed, jurisprudence has it that the marine insurance policy needs to be presented in evidence before the trial court or even belatedly before the appellate court. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*, the Court stated that the presentation of the marine insurance policy was necessary, as the issues raised therein arose from the very existence of an insurance contract between Malayan Insurance and its consignee, ABB Koppel, even prior to the loss of the shipment. In *Wallem Philippines Shipping, Inc. v. Prudential Guarantee and Assurance, Inc.*, the Court ruled that the insurance contract must be presented in evidence in order to determine the extent of the coverage. This was also the ruling of the Court in *Home Insurance Corporation v. Court of Appeals.*
>
> However, as in every general rule, there are admitted exceptions. In *Delsan Transport Lines, Inc. v. Court of Appeals*, the Court stated that the presentation of the insurance policy was not fatal because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel, unlike in *Home Insurance* in which the cargo passed through several stages with different parties and it could not be determined when the damage to the cargo occurred, such that the insurer should be liable for it.
>
> As in *Delsan*, there is no doubt that the loss of the cargo in the present case occurred while in petitioner's custody. Moreover, there is no issue as regards the provisions of Marine Open Policy No. MOP-12763, such that the presentation of the contract itself is necessary for perusal, not to mention that its existence was already admitted by petitioner in open court. And even though it was not offered in evidence, it still can be considered by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case.[59]

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[58] G.R. No. 161539, June 27, 2008, 556 SCRA 194.

[59] *Id.* at 203-204.

Similarly, in this case, the presentation of the insurance contract or policy was not necessary. Although petitioner objected to the admission of the Subrogation Receipt in its Comment to respondent's formal offer of evidence on the ground that respondent failed to present the insurance contract or policy,[60] a perusal of petitioner's Answer[61] and Pre-Trial Brief[62] shows that petitioner never questioned respondent's right to subrogation, nor did it dispute the coverage of the insurance contract or policy. Since there was no issue regarding the validity of the insurance contract or policy, or any provision thereof, respondent had no reason to present the insurance contract or policy as evidence during the trial.

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[60] *Rollo,* p. 208.

[61] SPECIAL AND AFFIRMATIVE DEFENSES

1. Defendant ATI, by way of Special and Affirmative Defenses, reiterates and repleads all the foregoing.

2. Plaintiff has no cause of action against defendant ATI because the latter was not negligent in the performance of its duty as an arrastre operator.

3. As evidenced by the Turn Over Survey of Bad Order Cargoes, the subject shipment arrived and was discharged unto the custody of defendant ATI in bad order condition.

4. The subject shipment was released/withdrawn from the custody of defendant ATI in exactly the same quantity and condition as when discharged from the carrying vessel. Hence, any alleged loss or damage is no longer the liability of defendant ATI.

5. Under Section 7.01 of Article VII of the Management Contract between the Philippine Port[s] Authority and defendant ATI (formerly Manila Ports Services, Inc.), the liability of the latter in case of loss, damage or non-delivery of cargoes in its custody and control shall be limited to PESOS FIVE THOUSAND ONLY (₱5,000.00). (*Id.* at 57).

[62] IV. ISSUES

ATI submits that the issues to be resolved by this Honorable Court are the following:

1. What is the extent of the damages sustained by the subject shipment?

2. Which of the defendants is liable for the damages?

3. Assuming that ATI is liable for the damages up to how much may it be held liable? (Records, p. 42)

Factual findings of the CA, affirming the RTC, are conclusive and binding

Petitioner's attempt to absolve itself from liability must likewise fail.

Only questions of law are allowed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Thus, it is not our duty "to review, examine, and evaluate or weigh all over again the probative value of the evidence presented,"[63] especially where the findings of both the trial court and the appellate court coincide on the matter.[64] As we have often said, factual findings of the CA affirming those of the RTC are conclusive and binding, except in the following cases: "(1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the [CA] is based on misapprehension of facts; (5) when the [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the [CA] manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the [CA] are premised on the absence of evidence and are contradicted by the evidence on record."[65] None of these are availing in the present case.

Both the RTC and the CA found the negligence of petitioner's stevedores to be the proximate cause of the damage/loss to the shipment. In disregarding the contention of petitioner that such finding is contrary to the documentary evidence, the CA had this to say:

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[63] *Puno v. Puno Enterprises, Inc.*, G.R. No. 177066, September 11, 2009, 599 SCRA 585, 590.

[64] *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 20.

[65] *Id.* at 20-21.

ATI, however, contends that the finding of the trial court was contrary to the documentary evidence of record, particularly, the Turn Over Survey of Bad Order Cargoes dated November 28, 1995, which was executed prior to the turn-over of the cargo by the carrier to the arrastre operator ATI, and which showed that the shipment already contained 2,702 damaged bags.

We are not persuaded.

Contrary to ATI's assertion, **witness Redentor Antonio**, marine cargo surveyor of Inchcape for the vessel Jinlian I which arrived on November 21, 1995 and up to completion of discharging on November 28, 1995, **testified that it was only after all the bags were unloaded from the vessel that the actual counting of bad order bags was made,** thus:

x x x x x x x x x

The above testimony of Redentor Antonio was corroborated by Edgar Liceralde, marine cargo surveyor connected with SMS Average Surveyors and Adjusters, Inc., the company requested by consignee Chemphil Albright and Wilson Corporation to provide superintendence, report the condition and determine the final outturn of quantity/weight of the subject shipment. x x x

x x x x x x x x x

Defendant-appellant ATI, for its part, presented its claim officer as witness who testified that a survey was conducted by the shipping company and ATI before the shipment was turned over to the possession of ATI and that the Turn Over Survey of Bad Order Cargoes was prepared by ATI's Bad Order (BO) Inspector.

Considering that the shipment arrived on November 21, 1998 and the unloading operation commenced on said date and was completed on November 26, 1998, while the Turn Over Survey of Bad Order Cargoes, reflecting a figure of 2,702 damaged bags, was prepared and signed on November 28, 1998 by ATI's BO Inspector and co-signed by a representative of the shipping company, **the trial court's finding that the damage to the cargoes was due to the improper handling thereof by ATI's stevedores cannot be said to be without substantial support from the records.**

We thus see no cogent reason to depart from the ruling of the trial court that ATI should be made liable for the 2,702 bags of damaged shipment. Needless to state, it is hornbook doctrine that

the assessment of witnesses and their testimonies is a matter best undertaken by the trial court, which had the opportunity to observe the demeanor, conduct or attitude of the witnesses. The findings of the trial court on this point are accorded great respect and will not be reversed on appeal, unless it overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case.

We also find ATI liable for the additional 179 damaged bags discovered upon delivery of the shipment at the consignee's warehouse in Pasig. The final Report of Survey executed by SMS Average Surveyors & Adjusters, Inc., and independent surveyor hired by the consignee, shows that the subject shipment incurred a total of 2881 damaged bags.

The Report states that the withdrawal and delivery of the shipment took about ninety-five (95) trips from November 29, 1995 to December 28, 1995 and it was upon completion of the delivery to consignee's warehouse where the final count of 2881 damaged bags was made. The damage consisted of torn/bad order condition of the bags due to spillages and caked/hardened portions.

We agree with the trial court that the damage to the shipment was caused by the negligence of ATI's stevedores and for which ATI is liable under Articles 2180 and 2176 of the Civil Code. The proximate cause of the damage (*i.e.*, torn bags, spillage of contents and caked/hardened portions of the contents) was the improper handling of the cargoes by ATI's stevedores, x x x

x x x x x x x x x

ATI has not satisfactorily rebutted plaintiff-appellee's evidence on the negligence of ATI's stevedores in the handling and safekeeping of the cargoes. x x x

x x x x x x x x x

We find no reason to disagree with the trial court's conclusion. Indeed, from the nature of the [damage] caused to the shipment, *i.e.*, torn bags, spillage of contents and hardened or caked portions of the contents, it is not difficult to see that the damage caused was due to the negligence of ATI's stevedores who used steel hooks to retrieve the bags from the higher portions of the piles thereby piercing the bags and spilling their contents, and who piled the bags in the open

storage area of ATI with insufficient cover thereby exposing them to the elements and [causing] the contents to cake or harden.[66]

Clearly, the finding of negligence on the part of petitioner's stevedores is supported by both testimonial and documentary evidence. Hence, we see no reason to disturb the same.

Judicial notice does not apply

Finally, petitioner implores us to take judicial notice of Section 7.01,[67] Article VII of the Management Contract for cargo handling services it entered with the PPA, which limits petitioner's liability to ₱5,000.00 per package.

Unfortunately for the petitioner, it cannot avail of judicial notice.

Sections 1 and 2 of Rule 129 of the Rules of Court provide that:

SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

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[66] *Rollo,* pp. 30-36.

[67] Section 7.01 *Responsibility and Liability for Losses and Damages; Exceptions* – The Contractor shall, at its own expense, handle all merchandise in all work undertaken by it hereunder, diligently and in a skillful, workman-like and efficient manner. The Contractor shall be solely responsible as an independent contractor, and hereby agrees to accept liability and to pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes in its custody and control to the extent of the actual invoice value of each package which in no case shall be more than FIVE THOUSAND PESOS (₱5,000.00) each, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing together with the declared Bill of Lading value and supported by a certified packing list to the Contractor by the interested party or parties before the discharge or loading unto vessel of the goods.

x x x x x x x x x

SEC. 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration or ought to be known to judges because of their judicial functions.

The Management Contract entered into by petitioner and the PPA is clearly not among the matters which the courts can take judicial notice of. It cannot be considered an official act of the executive department. The PPA, which was created by virtue of Presidential Decree No. 857, as amended,[68] is a government-owned and controlled corporation in charge of administering the ports in the country.[69] Obviously, the PPA was only performing a proprietary function when it entered into a Management Contract with petitioner. As such, judicial notice cannot be applied.

WHEREFORE, the petition is hereby *DENIED.* The assailed July 14, 2005 Decision and the February 14, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 61798 are hereby *AFFIRMED.*

SO ORDERED.

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

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[68] REVISED CHARTER OF THE PHILIPPINE PORTS AUTHORITY. Promulgated on December 23, 1975.

[69] SECTION 6. Corporate Powers and Duties. —

a) The corporate duties of the Authority shall be:

x x x x x x x x x

(ii) To supervise, control, regulate, construct, maintain, operate, and provide such facilities or services as are necessary in the ports vested in, or belonging to the Authority.

x x x x x x x x x

b) The corporate powers of the Authority shall be as follows:

x x x x x x x x x

(vi) To make or enter [into] contracts of any kind or nature to enable it to discharge its functions under this Decree.

x x x x x x x x x.

SECOND DIVISION

[G.R. No. 171497. April 4, 2011]

MARIA LOURDES TAMANI, CONCEPCION TAMANI, ESTRELLA TAMANI, TERESITA TAMANI, AZUCENA SOLEDAD, DOLORES GUERRERO, CRISTINA TUGADE, DAMIETA MANSAANG, MANUEL TAMANI, VALERIANA CASTRO, AURORA SANTIAGO and ROSARIO CASTILLO, *petitioners, vs.* **ROMAN SALVADOR and FILOMENA BRAVO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE COURT EXCEPT WHEN THE FACTUAL FINDINGS OF THE TRIAL COURT AND THE APPELLATE COURT ARE CONFLICTING.— Well settled is the rule that in the exercise of Our power of review the findings of facts of the CA are conclusive and binding on this Court. However, there are recognized exceptions, among which is when the factual findings of the trial court and the appellate court are conflicting. The disagreement between the RTC and the CA in their respective factual conclusions with regard to the alleged forgery of the signature of Tamani authorizes this Court to re-examine the testimonies and evidence submitted by the parties. It is noteworthy to point out that two expert witnesses testified, each with a different opinion on the issue at hand.

2. ID.; EVIDENCE; OPINION OF EXPERT WITNESS; WHILE CREDENTIALS OF AN EXPERT WITNESS PLAY A FACTOR IN THE EVIDENTIARY AND PERSUASIVE WEIGHT OF HIS TESTIMONY, THE SAME CANNOT BE THE SOLE FACTOR IN DETERMINING ITS VALUE; THE JUDGE MUST CONDUCT HIS OWN INDEPENDENT EXAMINATION OF THE EVIDENCE UNDER SCRUTINY.— A reading of the RTC Decision shows that, notwithstanding the availability of testimonies from two expert

witnesses on the matter of the authenticity of Tamani's signature, the RTC opted not to rule squarely on the issue and instead conveniently disposed of the issue in the following fashion, to wit: The two witnesses, Bienvenido C. Albacea and Mely Feliciano Sorra having examined the same documents but arrived and submitted opposing conclusions. It would appear, however, that based on their educational, professional and work backgrounds, the Court would give more weight to the report and testimony of Mely Feliciano Sorra, that the questioned documents and the standard documents were written by different persons. The manner by which the RTC disposed of the issue leaves much to be desired. While credentials of an expert witness play a factor in the evidentiary and persuasive weight of his testimony, the same cannot be the sole factor in determining its value. The CA was thus correct when it declared that the judge must conduct his own independent examination of the signatures under scrutiny.

3. ID.; ID.; ID.; THE SUPERIOR CREDENTIALS OF AN EXPERT WITNESS GIVES ADDED VALUE TO HER TESTIMONY.— The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer. While admittedly this Court was unable to fully comprehend all the differences noted by Sorra given that her testimony was fairly technical in nature and description, it would, however, not be amiss to state that this Court has observed a good number of the differences noted by her. Moreover, while We are not unmindful of the testimony of Albacea, the document examiner from the NBI, this Court is more inclined to believe the findings of Sorra, because unlike Albacea, Sorra limited her examination to Exhibits "S-1 to S-11" and "S-19". Albacea, on the other hand, considered all 19 specimen signatures. Noticeably, Exhibits "S-12" to "S-18" were executed several years apart from the questioned signature which was supposedly written in 1959. However, the dates of execution of Exhibits "S-12" to "S-18" covered years ranging from 1933 to 1952 and 1974. Thus, this Court finds that Sorra was correct when she opted to disregard the said Exhibits in her examination.

Lastly, while it was improper for the RTC to rely solely on Sorra's credentials, her superior credentials, compared to that of Albacea, give added value to her testimony.

4. ID.; ID.; WEIGHT AND SUFFICIENCY; ONE WHO ALLEGES FORGERY HAS THE BURDEN OF ESTABLISHING HIS CASE BY A PREPONDERANCE OF EVIDENCE OR EVIDENCE WHICH IS OF GREATER WEIGHT OR MORE CONVINCING THAN THAT WHICH IS OFFERED IN OPPOSITION TO IT.— It puzzles this Court as to how Cruz, a confessed businesswoman, could allegedly buy the property in dispute for investment purpose without bothering to ascertain the land's identity and character. As can be gleaned from her testimony, Cruz's indifference and lack of prudence is alarming. x x x As aptly argued by petitioners, the following circumstances would show that the alleged deed of sale was spurious: *First*, Cruz never took action to possess the property from 1959 to 1980; *Second*, even after the supposed sale, Tamani was continuously declaring the land in his name for taxation purposes and paid the taxes due thereon; any reasonable person who had sold his property would not undertake the unnecessary burden of continuing to pay real property taxes on the same; *Last*, the land was allegedly sold to Cruz for ₱2,500.00 in 1959 and yet twenty-one years (21) after, Cruz sold the land to respondents for the same amount of ₱2,500.00. One who alleges forgery has the burden of establishing his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. Based on the preceding discussion, this Court finds that petitioners have satisfactorily discharged such burden.

5. ID.; ID.; ID.; PREPONDERANCE OF EVIDENCE INARGUABLY FAVORS PETITIONERS.— Withal, although there is no direct evidence to prove forgery, preponderance of evidence inarguably favors petitioners. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing

to the court as worthier of belief than that which is offered in opposition thereto.

6. ID.; ID.; PROOF OF NOTARIAL DOCUMENTS; *PRIMA FACIE* PRESUMPTION OF AUTHENTICITY AND DUE EXECUTION; NOT APPLICABLE GIVEN THE HIGHLY QUESTIONABLE CIRCUMSTANCES PRESENT IN CASE AT BAR.— The deed of sale may have been notarized and it is true that a notarial document is considered evidence of the facts expressed therein. A notarized document enjoys a *prima facie* presumption of authenticity and due execution, and only clear and convincing evidence will overcome such legal presumption. Nonetheless, given the highly questionable circumstances present in the case at bar such *prima facie* presumption was properly put in dispute.

7. CIVIL LAW; SPECIAL CONTRACTS; SALES; RESPONDENTS CANNOT BE CONSIDERED AS BUYERS IN GOOD FAITH.— A purchaser in good faith is one who buys the property of another, without notice that some other person has a right to, or interest in, such property, and pays the full and fair price for it at the time of such purchase or before he has notice of the claim or interest of some other persons in the property. He buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. He cannot close his eyes to facts that should put a reasonable man on his guard and still claim he acted in good faith. It is undisputed that respondents were neighbors of petitioners and even co-owners of land under TCT No. 8582. Respondents have also dealt with the Tamanis in the past, having mortgaged their property together when respondents availed of a loan from the Government Service Insurance System. Thus, it is inconceivable for respondents not to know that petitioners had been exercising open, continuous and notorious possession over the property. Like Cruz, respondents should have ascertained the land's identity and character given that houses were standing on the land in dispute and petitioners had been leasing the same to tenants.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioners.
Agcaoili Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the September 30, 2005 Decision[2] and February 10, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 61674.

The facts of the case are as follows:

On July 29, 1986, a Complaint[4] for quieting of title was filed by respondent spouses Roman Salvador and Filomena Bravo (respondents) against petitioners Maria Lourdes Tamani, Concepcion Tamani, Estrella Tamani, Teresita Tamani, Azucena Soledad, Dolores Guerrero, Cristina Tugade, Damieta Mamsaang, Manuel Tamani, Valeriana Castro, Aurora Santiago and Rosario Castillo (petitioners), over a 431 sq. m. parcel of land located at Solano, Nueva Vizcaya. The case was filed with Branch 29 of the Regional Trial Court (RTC) of Bayombong, Nueva Vizcaya and docketed as Civil Case No. 5252. Petitioners are the surviving children and legal heirs of the spouses Demetrio Tamani and Josefa Caddauan (Spouses Tamani).

Respondents and the Spouses Tamani are co-owners of an undivided parcel of land with an area of 776 sq. m. under Transfer Certificate of Title (TCT) No. 8582.[5] Under said title, respondents own 345 sq. m. of the property whereas the Spouses Tamani own the remaining 431 sq. m. (disputed property).

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[1] *Rollo*, pp. 26-67.

[2] Penned by Associate Justice Edgardo F. Sundiam with Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao concurring; *id*. at 73-86.

[3] *Id.* at 88.

[4] *Id.* at 141-144.

[5] *Id.* at 146-147.

On August 17, 1959, the Spouses Tamani allegedly sold the disputed property to Milagros Cruz (Cruz) as evidenced by a Deed of Absolute Sale[6] for a consideration of Php 2,500.00.

On December 11, 1980, Cruz sold the disputed property to respondents through a Deed of Absolute Sale for the same consideration of Php 2,500.00. Respondents thus acquired ownership over the whole area of 776 sq. m. resulting in the cancellation of TCT No. T-8582 and the subsequent issuance of TCT No. T-55328.[7]

In the meantime, in 1973, Benigno Magpale (Magpale) and Leoncia Velasco (Velasco) filed a complaint for specific performance against the Spouses Tamani in the then Court of First Instance (CFI) of Bayombong, Nueva Vizcaya. In said complaint, Magpale and Velasco sought to compel the Spouses Tamani to execute a deed of sale over a residential lot with an area of 496 sq. m., which, they alleged, was sold to them by the Spouses Tamani in 1936 without documentation. In a Decision[8] dated February 28, 1977, the CFI dismissed the complaint. Magpale and Velasco appealed to the Intermediate Appellate Court, which, however, affirmed the decision of the CFI. Since then, respondents have remained in possession over the disputed property.

At the RTC, petitioners filed an Answer[9] wherein they argued that they were the lawful owners and were in actual possession of the disputed property having inherited the same from their parents. Petitioners contend that the signature of their parents were forged and thus assail the validity of the August 17, 1959 Deed of Absolute sale between Cruz and their parents.

During trial, at the instance of petitioners, the signature of Demetrio Tamani appearing on the deed of sale and his standard signatures were submitted for examination and comparison to

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[6] *Id.* at 148.

[7] *Id.* at 145.

[8] *Id.* at 114-120.

[9] *Id.* at 172-178.

the Questioned Documents Division of the National Bureau of Investigation (NBI). Bienvenido C. Albacea (Albacea), a document examiner of the NBI, filed a Report[10] (NBI report) finding that "the questioned and standard signatures "DEMETRIO TAMANI" are WRITTEN by one and the same person."[11] Dissatisfied with the NBI report, petitioners asked for another examination of the signatures, this time submitting the same to the Philippine National Police (PNP) Crime Laboratory Service. Mely Sorra (Sorra), a document examiner of the PNP, filed a Report[12] (PNP

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[10] NBI Report

Comparative examination of the specimens submitted, under magnifying lenses and stereoscopic microscope and with the aid of photographic enlargements, reveals that there exist significant fundamental similarities in handwriting characteristics/habits between the questioned and standard signatures "DEMETRIO TAMANI," such as in:

- Structural pattern of letters
- Proportion characteristics
- Continuity of strokes
- Placement and character of the "i-dot"
- Interplay of delicate and heavy strokes
- Natural variations
- Line quality

CONCLUSION:

The questioned and the standard signatures "DEMETRIO TAMANI" were WRITTEN by one and the same person. (*Id.* at 190-191).

[11] *Rollo,* p. 191.

[12] The PNP report reads:

FINDINGS:

1. Comparative examination and analysis of the questioned signature DEMETRIO TAMANI marked "Q" and the standard signatures of Demetrio Tamani marked "S-1" to "S-11" and "S-19" reveal significant divergences in handwriting movement, lateral spacing, quality of line, stroke structure and other individual handwriting characteristics.
2. Comparative examination and analysis of the questioned signatures DEMETRIO marked "Q-1", "Q-2" and the standard signatures Demetrio Tamani marked "S-1" to "S-11" and "S-19" reveal significant similarities in handwriting movement, skill, quality of line, stroke structure, and other individualize handwriting characteristics.

report) finding that "the questioned signature of DEMETRIO TAMANI marked 'Q' appearing on the Deed of Absolute Sale dated August 17, 1959 and the standard signatures of Demetrio Tamani marked 'S-1' to 'S-11' and 'S-19' WERE WRITTEN BY TWO DIFFERENT PERSONS."[13]

On July 28, 1998, the RTC rendered a Decision[14] ruling in petitioners' favor. The dispositive portion of said decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring the Deed of Sale dated August 17, 1959, Exh. "A", purporting to be executed by Demetrio Tamani in favor of the spouses Milagros Cruz and Cesar Cruz, as null and void and without legal force and effect.
>
> 2. Declaring the Deed of Sale dated December 11, 1980, Exh. "B" executed by the spouses Milagros Cruz and Cesar Cruz in favor of the spouses Roman Salvador and Filomena Bravo, as null and void and without legal force and effect.
>
> 3. Transfer Certificate of Title No. T-55328, Exh. "C" in the name of the spouses Roman Salvador and Filomena Bravo to be null and void and without any legal force and effect. The Register of Deeds of Nueva Vizcaya is hereby directed to CANCEL the same in his Office.
>
> 4. Declaring that Transfer Certificate of Title No. T- 8582 evidencing ownership of Demetrio Tamani and Josefa Caddauan for 431 sq. m. and Ramon Salvador and Filomena Bravo for

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3. Standard signatures DEMETRIO TAMANI marked "S-12" to "S-18" were not utilized in the comparison due to the wide gap of execution which is inappropriate as basis for comparison.

   CONCLUSION:

1. The questioned signature of DEMETRIO TAMANI marked "Q" appearing on the Deed of Absolute Sale dated 17 August 1959 and the standard signatures of Demetrio Tamani marked "S-1" to "S-11" and "S-19" WERE WRITTEN BY TWO DIFFERENT PERSONS. (*Id.* at 192-193).

[13] *Rollo,* p. 192.

[14] *Id.* at 96-105.

345 sq. m. to be valid and subsisting in the land records of Nueva Vizcaya. The Register of Deeds shall effect the same in his office.

x x x x x x x x x

SO ORDERED.[15]

Confronted with conflicting testimonies from handwriting experts, the RTC gave more weight to the PNP report and testimony of Sorra because of her educational, professional and work background.

Dissatisfied with the decision of the RTC, respondents filed a Notice of Appeal.[16]

On September 30, 2005, the CA issued a Decision ruling in respondents' favor, the dispositive portion of which reads:

WHERFORE (sic), premises considered, the APPEAL is hereby GRANTED. Accordingly, the Decision, dated July 28, 1998, is REVERSED and SET ASIDE and a new one is entered declaring the validity of the following documents: Deed of Absolute Sale executed on August 17, 1959, Deed of Sale executed on December 11, 1980 and the TCT No. T-55328 in the name of appellants.

SO ORDERED.[17]

The CA ruled that the RTC erred when it relied solely on Sorra's educational, professional and work background when it decided to give more credence to the PNP report. The CA, after examining the questioned and standard signatures of Tamani opined that "the similarities of strokes are more prominent and pronounced than the dissimilarities and the apparent dissimilarities are overshadowed by the striking similarities in the questioned and the standard signatures."[18] The CA also observed that petitioners surprisingly did not question the signature of Josefa

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[15] *Id.* at 105.

[16] CA *rollo*, p. 20.

[17] *Rollo*, pp. 85-86.

[18] *Id.* at 83.

Caddauan (Caddauan). The CA surmised that Caddauan may have signed the Deed of Absolute sale because she knew that her husband, Demetrio Tamani, was going to sell the property, otherwise, she would have protested and not signed the deed.[19] Lastly, the CA held that petitioners failed to overcome the presumption that the deed of absolute sale, being a public document, carries the presumption of authenticity and due execution.[20]

Aggrieved, petitioners filed a Motion for Reconsideration,[21] which was, however, denied by the CA in a Resolution dated February 10, 2006.

Hence, herein petition, with petitioners raising the following issues for this Court's consideration, to wit:

I.

THE HONORABLE COURT OF APPEALS DISUSED (SIC) THE PROPER ROLE OF AN APPELLATE COURT IN CASES WHERE THERE ARE CONFLICTING EXPERT TESTIMONIES AND IMPROPERLY INTERPRETED THEIR DUTY TO INDEPENDENTLY EVALUATE THE AUTHENTICITY OF THE SIGNATURE OF THE LATE DEMETRIO TAMANI.

II.

THE HONORABLE COURT OF APPEALS HAD NO BASIS IN OVERTURNING THE FACTUAL FINDINGS OF THE TRIAL COURT.

III.

THE ASSAILED ISSUANCES WERE ISSUED IN GRAVE ABUSE OF DISCRETION AND IN A MANNER NOT IN ACCORD WITH THE DECISIONS LAID DOWN BY THIS HONORABLE SUPREME COURT.[22]

The petition is meritorious.

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[19] *Id.*

[20] *Id.* at 84.

[21] *Id.* at 208-224.

[22] *Id.* at 37-38.

Well settled is the rule that in the exercise of Our power of review the findings of facts of the CA are conclusive and binding on this Court. However, there are recognized exceptions, among which is when the factual findings of the trial court and the appellate court are conflicting.[23] The disagreement between the RTC and the CA in their respective factual conclusions with regard to the alleged forgery of the signature of Tamani authorizes this Court to re-examine the testimonies and evidence submitted by the parties. It is noteworthy to point out that two expert witnesses testified, each with a different opinion on the issue at hand.

Before anything else, this Court observes that the present spectacle of having two expert witnesses with conflicting findings could have been avoided had respondents timely objected to petitioners' motion to have a second re-examination of Tamani's signature. After all, respondents are correct in their claim that the first examination was at the instance of petitioners. Respondents should have, therefore, objected to the second re-examination, as the RTC would have likely sustained the motion. However, a perusal of the records[24] would show that

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[23] *Borillo v. Court of Appeals*, G.R. No. 55691, May 21, 1992, 209 SCRA 130, 140; *Salvador v. Court of Appeals*, G.R. No. 109910, April 5, 1995, 243 SCRA 239, 253.

[24] See RTC Order dated April 5, 1994 which reads: "It has been agreed that Atty. Romeo Montefalco, counsel for the plaintiffs will submit the original Deed of Absolute Sale, dated August 17, 1959, already marked by the NBI as Exhibit 'Q' and 'Q-1', and the Deed of Mortgage, dated sometime in 1958 already marked as Exhibit 'Q-2' and 'Q-3', and for the counsel for the defendant, Atty. Clemente Paredes, to bring personally for examination at the PNP Laboratory, Camp Crame. x x x SO ORDERED." (Records, Vol. 1, p. 446).

See also RTC Order dated July 11, 1994 which reads: "Atty. Romeo Montefalco, counsel for plaintiffs, offered no objection to the motion to send exhibits to PNP Crime Laboratory Services. Atty. Clemente D. Paredes agreed that the defendants will shoulder the expenses of the court personnel who will bring the exhibits to the PNP Crime Laboratory Services, Camp Crame, Quezon City for examination. The record would show that the exhibits were previously examined by the National Bureau of Investigation. There being no objection to the motion, the same is GRANTED.

Accordingly, Mrs. Feliciana Villa, Clerk of this Branch, is hereby ordered

counsel for respondents never objected to petitioners' motion for a re-examination of Tamani's signature.

A reading of the RTC Decision shows that, notwithstanding the availability of testimonies from two expert witnesses on the matter of the authenticity of Tamani's signature, the RTC opted not to rule squarely on the issue and instead conveniently disposed of the issue in the following fashion, to wit:

> The two witnesses, Bienvenido C. Albacea and Mely Feliciano Sorra having examined the same documents but arrived and submitted opposing conclusions. It would appear, however, that based on their educational, professional and work backgrounds, the Court would give more weight to the report and testimony of Mely Feliciano Sorra, that the questioned documents and the standard documents were written by different persons.[25]

The manner by which the RTC disposed of the issue leaves much to be desired. While credentials of an expert witness play a factor in the evidentiary and persuasive weight of his testimony, the same cannot be the sole factor in determining its value. The CA was thus correct when it declared that the judge must conduct his own independent examination of the signatures under scrutiny.[26]

The CA, for its part, after examining the questioned signature and standard signatures of Tamani ruled that "*although there are slight dissimilarities between them, one could not ignore the glaring and striking similarities of strokes and pattern of handwriting in the questioned and standard signatures of Demetrio Tamani. We opine that the similarities of strokes are more prominent and pronounced than the dissmilarities and the apparent dissimilarities are overshadowed by the striking similarities in the questioned and the standard signatures.*"[27]

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to bring the exhibits to the PNP Crime Laboratory Services for examination at the expense of the defendants within (10) days from receipt of this order. SO ORDERED." (*Id.* at 451)

[25] *Rollo,* p. 103.

[26] *Id.* at 82.

[27] *Id.* at 83.

Indeed, at first glance, it is easy to see why the CA ruled the way it did, considering the presence of similarities between the questioned signature and standard signatures of Tamani. However, after painstakingly reviewing the testimonies of the expert witnesses and the documentary evidence at hand, this Court is more inclined to believe that the signature of Tamani appearing on the August 17, 1959 Deed of Sale was forged as can be gleaned from the testimony of Sorra, the document examiner from the PNP Crime Laboratory.

Sorra testified that the questioned signature was executed in a slow and drawn manner, while the standard signatures were executed in a fast manner. Moreover, the line quality of the questioned signature, particularly the letters "o", "m" and "n" exhibited hesitation and patchings, while the standard signatures exhibited equal distribution of ink line and had good line quality.[28] In addition, the lateral spacing of the questioned signature was crumpled, while the lateral spacing of the standard signature is normal.[29] Particularly, the chart below illustrates the specific differences noted by Sorra in her testimony,[30] thus:

Letter	Questioned Signature	Standard Signatures
Capital letter D	Exhibit movement impulse	Continuous and fluent
Letter E	No initial stroke	Connected and has a small initial stroke
Letter M	First hump is rounded	First hump is pointed and angular
Letter T	"T-crossing" located at middle letter t	"T-crossing" is above the middle of the letter t
Letter O	Constricted and patched	O is Very obvious

[28] TSN, December 14, 1994, pp. 16-17.

[29] *Id*.

[30] See TSN, December 14, 1994, pp. 16-19.

Letter M	Patched- after the first hump there is a small stroke	Three humps
I dot	Long and slanting to the right	Smaller and slanting to the left
Letter N	Connected with letter a and has only one hump	Two humps
Terminal stroke	Tendency to go to the right and is fluent	Tendency to go upward

During cross-examination, Sorra explained that the differences she accounted for were not "variations," which are normal and usual deviations. She explained that variations are attributable to the fact that humans are not machines, such that it would be impossible to have two perfectly identical handwriting samples. Instead, Sorra clarified that the differences were "different" based on the hesitation in writing in the questioned signature. Sorra was steadfast that the similarities between the questioned signature and the standard signatures is attributable to the fact that the case involved a "simulated forgery" or a copied forgery, such that there will be similarities, but the similarities will be superficial.

The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.[31] While admittedly this Court was unable to fully comprehend all the differences noted by Sorra given that her testimony was fairly technical in nature and description, it would, however, not be amiss to state that this Court has observed a good number of the differences noted by her. Moreover, while

[31] *Felizardo S. Obando and Juan S. Obando v. People of the Philippines*, G.R. No. 138696, July 7, 2010.

We are not unmindful of the testimony of Albacea, the document examiner from the NBI, this Court is more inclined to believe the findings of Sorra, because unlike Albacea, Sorra limited her examination to Exhibits "S-1 to S-11" and "S-19". Albacea, on the other hand, considered all 19 specimen signatures. Noticeably, Exhibits "S-12" to "S-18" were executed several years apart from the questioned signature which was supposedly written in 1959. However, the dates of execution of Exhibits "S-12" to "S-18" covered years ranging from 1933 to 1952 and 1974. Thus, this Court finds that Sorra was correct when she opted to disregard the said Exhibits in her examination. Lastly, while it was improper for the RTC to rely solely on Sorra's credentials, her superior credentials, compared to that of Albacea,[32] give added value to her testimony.

Furthermore, as observed by the RTC, the circumstances surrounding the sale of the property militate its veracity and truthfulness, to wit:

1. The mortgage contract, Exh. "E", where the whole lot covered by TCT No. T-8582 was given as a collateral to the GSIS for a loan of ₱12,000 on June 14, 1958 or before the alleged sale. Demetrio

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[32] As noted by the RTC in its Decision:

a) BIENVENIDO C. ALBACEA:

Document Examiner II, Questioned Documents Division, National Bureau of Investigation since 1976 up to 1993 when he testified. Previously, he was a crime photographer from 1965 to 1976. He is a graduate of BS Criminology, 1971, Philippine College of Criminology. He examined, more or less, 10,000 documents, appeared 100 times in Court and was upheld therein in 10 cases or 10%.

b) MELY SORRA

Document Examiner II in the Crime Laboratory Service, GHQ, PNP, since 1978 to 1994 when she testified. A graduate of Masteral Degree in Education, and Professional Criminologist. Part time professor of Questioned Documents since 1985, Philippine College of Criminology and Republican Colleges, Resource Speaker of TV on Truth Verified Incorporated System on Questioned Documents, and member of the Professional Criminologist Association in Criminology Education. She examined more than 30,000 documents, appeared and testified in Court 800 times, more or less, and has been upheld approximately 30% in these cases. (*Rollo*, pp. 102-103).

Tamani was a signatory to the contract being a co-owner of the land covered therein. If the mortgage value of the whole land on June 14, 1958 was then ₱12,000.00 and Demetrio Tamani being the owner of 431 of the 771 sq. m. covered by the title or more than one-half thereof, it would be contrary to human nature for him to sell his portion of the land for only ₱2,500.00 a year after or on August 17, 1959 for less than the loan value of the land.

2. Demetrio Tamani declared the land for taxation purpose under Declaration of Real Property No. 21177, Exh. "16" and 4421, Exh. "17" and paid the taxes thereon under No. 6758595, Exh. "18" for ₱172.24 dated May 31, 1961 for the years 1955 to 1960; OR No. 6758596, Exh. "19" for ₱19.00 dated May 31, 1961 for the year 1961 and O.R. No. 1608650, Exh. "20" for ₱72.35 dated August 28, 1973 for the years 1961-1973.

3. The certifications of the Municipal Treasurer Solano, Nueva Vizcaya dated August 13, 1975, Exh. "22", and August 14, 1975, Exh. "23", that Demetrio Tamani is the sole owner and who paid taxes of the land under TD. No. 4421 and 14318 for the year 1961 to 1973.

4. Sworn statement of the Fair market value of Real Property on September 3, 1973, Exh. "21" filed by Demetrio Tamani.

x x x x x x x x x

The declaration of the land for taxation purposes and payments of the taxes due thereon by Demetrio Tamani are not the acts of or (sic) one who is alleged to have sold the subject land. These acts, in fact, are indications that he never parted with the said land.

It is [also not] disputed that the Tamanis and their heirs are in actual possession of the 431 sq. m. area on the subject land.

5. [That] contracts of lease, dated May 7, 1986 executed by Teresita Tamani in favor of the tenants of the building erected on the subject land, namely, Antonio Taboy, Cipriano Hernandez, Paulino Cadiente, Basilio Fernandez. These lease contracts were executed by defendants over the property before this case was filed in Court which are acts of dominion over the subject land.

On the contrary, Milagros Cruz as testified to by her, did not declare the land for taxation purposes nor paid any tax thereon from the time she allegedly bought it on August 17, 1959 up to the time she sold it on December 11, 1980.

It appears also from the testimony of Milagros Cruz (tsn, p. 30, Feb. 21, 1991) that she allegedly bought the land for investment purposes of ₱2,500.00 from Demetrio Tamani. She sold, however, the land after 11[33] years on December 11, 1980, for the same price of ₱2,500.00. This fact casts doubt as to whether the alleged sale really took place.[34]

Moreover, it puzzles this Court as to how Cruz, a confessed businesswoman, could allegedly buy the property in dispute for investment purpose without bothering to ascertain the land's identity and character. As can be gleaned from her testimony, Cruz's indifference and lack of prudence is alarming, *viz*.:

Q. By the way, will you kindly tell us, more or less, the floor area of that small house which according to you is the only house in the land in question?
A. I do not know, sir.

Q. You don't even know the exact material of the house that was erected thereon?
A. No, sir.

Q. You did not even verify who were the persons residing therein?
A. No, sir.

Q. You did not inspect the premises, the meets (sic) and bounds of that portion of that parcel of land?
A. No, sir.[35]

x x x x x x x x x

Q. In other words, Mrs. Witness, you never came to know that a certain Benigno Magpale actually resided on that portion of the lot claiming to be the absolute owner thereof?
A. There was somebody who was staying in the house but I do not know who [he was].

Q. You did not care to know it for yourself who that person is?

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[33] Should be "21" years.

[34] *Rollo*, pp. 103-105.

[35] TSN, February 21, 1991, pp. 18-19.

A. No, sir.

Q. You did not also likewise care as to what is the nature of Benigno Magpale's possession and what is the claim over the property?
A. No, sir.[36]

x x x x x x x x x

Q. You did not also know that there is a certain Cipriano Hernandez who has a house inside that land?
A. No, sir.

Q. You did not care to know that there are other persons?
A. No, sir.

Q. You did not care to know whether there are other houses aside from that of Mr. Magpale?
A. No, sir.

Q. You did not also come to know that there is a certain Paulino Cadiente whose house was erected thereon?
A. No, sir.

Q. You did not also care to know whether there is another person in the name of Basilio Fernandez?
A. I do not know, sir.

Q. You did not know that there are at [least] six (6) houses inside the land in question?
A. I saw one house only, sir.

Q. What you saw is that house along the national road?
A. Yes, sir.

Q. You did not care to see the houses at the back?
A. No, sir.

Q. Despite the fact you were purchasing this property?
A. No, sir. The land was only shown to me.[37]

Based on the foregoing, as aptly argued by petitioners, the following circumstances would show that the alleged deed of

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[36] *Id.* at 20.

[37] *Id.* at 21.

sale was spurious: *First,* Cruz never took action to possess the property from 1959 to 1980; *Second*, even after the supposed sale, Tamani was continuously declaring the land in his name for taxation purposes and paid the taxes due thereon; any reasonable person who had sold his property would not undertake the unnecessary burden of continuing to pay real property taxes on the same; *Last,* the land was allegedly sold to Cruz for ₱2,500.00 in 1959 and yet twenty-one years (21) after, Cruz sold the land to respondents for the same amount of ₱2,500.00. One who alleges forgery has the burden of establishing his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.[38] Based on the preceding discussion, this Court finds that petitioners have satisfactorily discharged such burden.

The deed of sale may have been notarized and it is true that a notarial document is considered evidence of the facts expressed therein.[39] A notarized document enjoys a *prima facie* presumption of authenticity and due execution,[40] and only clear and convincing evidence will overcome such legal presumption.[41] Nonetheless, given the highly questionable circumstances present in the case at bar such *prima facie* presumption was properly put in dispute.

Given the manner by which petitioners presented and defended their case, this Court is of the opinion that respondents should have presented the individual who acted as witness to the deed of sale and the notary public who acknowledged the instrument

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[38] *Delfin v. Billones*, G.R. No. 146550, March 17, 2006, 485 SCRA 38, 48.

[39] *Mendiola v. Court of Appeals*, 193 Phil. 326, 335 (1981). Rule 132, Sec. 30 of the Rules of Court provides:

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

[40] *Gutierrez v. Mendoza-Plaza*, G.R. No. 185477, December 4, 2009, 607 SCRA 807, 817.

[41] *Domingo v. Robles*, 493 Phil. 916, 921 (2005).

to shed light on the circumstances of the same. However, when Cruz was asked if she remembered the person who acted as a witness to the deed of sale, Cruz peculiarly said that she did not know or remember who the individual was, to wit:

Q. Could you tell us who that person was who affixed his signature as witness to your deed of sale with Mr. Tamani?
A. I do not know, sir.

Q. You do not even remember the face?
A. No, sir [. It] was a long time ago. I know (sic) longer recall. I am already old. I am already 60.[42]

Likewise, it appears that the identity of the notary public cannot be established. A perusal of the acknowledgment would show that only the signature of the purported notary public was affixed to the document without indicating basic and vital information such as his complete name.

Finally, given the foregoing discussion, the question to be resolved then is should respondents be considered buyers in good faith having purchased the property in dispute from Cruz?

A purchaser in good faith is one who buys the property of another, without notice that some other person has a right to, or interest in, such property, and pays the full and fair price for it at the time of such purchase or before he has notice of the claim or interest of some other persons in the property. He buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. He cannot close his eyes to facts that should put a reasonable man on his guard and still claim he acted in good faith.[43] It is undisputed that respondents were neighbors of petitioners and even co-owners of land under TCT No. 8582. Respondents have also dealt with the Tamanis in the past,

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[42] TSN, February 21, 1991, p. 30.

[43] *Heirs of Ignacia Aguilar-Reyes v. Mijares*, 457 Phil. 120, 136-137 (2003).

having mortgaged their property together when respondents availed of a loan from the Government Service Insurance System. Thus, it is inconceivable for respondents not to know that petitioners had been exercising open, continuous and notorious possession over the property. Like Cruz, respondents should have ascertained the land's identity and character given that houses were standing on the land in dispute and petitioners had been leasing the same to tenants.

Withal, although there is no direct evidence to prove forgery, preponderance of evidence inarguably favors petitioners. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[44]

WHEREFORE, premises considered, the petition is *GRANTED*. The September 30, 2005 Decision and February 10, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 61674 are *REVERSED* and *SET ASIDE*.

SO ORDERED.

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

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[44] *Go v. Court of Appeals*, 403 Phil. 883, 890-891 (2001).

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 978, dated March 30, 2011.

THIRD DIVISION

[G.R. No. 171840. April 4, 2011]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **DEPARTMENT OF AGRARIAN REFORM and METRACO TELE-HYGIENIC SERVICES CORPORATION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL); DETERMINATION OF JUST COMPENSATION; THE LAND BANK OF THE PHILIPPINES' VALUATION OF LANDS COVERED BY THE CARL IS CONSIDERED ONLY AS AN INITIAL DETERMINATION, WHICH IS NOT CONCLUSIVE; IT IS THE REGIONAL TRIAL COURT, SITTING AS A SPECIAL AGRARIAN COURT, THAT SHOULD MAKE THE FINAL DETERMINATION OF JUST COMPENSATION TAKING INTO CONSIDERATION THE FACTORS ENUMERATED IN SECTION 17 OF R.A. NO. 6657 AND APPLICABLE DEPARTMENT OF AGRARIAN REFORM (DAR) REGULATIONS.— Under Section 1 of Executive Order No. 405, series of 1990, petitioner LBP is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking. Through a notice of voluntary offer to sell (VOS) submitted by the landowner, accompanied by the required documents, the DAR evaluates the application and determines the land's suitability for agriculture. The LBP likewise reviews the application and the supporting documents and determines the valuation of the land. Thereafter, the DAR issues the Notice of Land Valuation to the landowner. In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court. The LBP's valuation of lands covered by CARL is considered only

as an initial determination, which is not conclusive, as it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of R.A. No. 6657 and the applicable DAR regulations.

2. ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 5 (DAR AO NO. 5); THE SPECIAL AGRARIAN COURT AND THE COURT OF APPEALS CLEARLY ERRED IN COMPLETELY DISREGARDING THE DATA PROVIDED BY THE MUNICIPAL AGRARIAN REFORM OFFICER (MARO) SIMPLY BECAUSE IT CONTAINED A NOTATION THAT THE FIGURES INDICATED FOR TWO MONTHS WERE NOT NORMAL DUE TO TYPHOONS.— As clearly stated in DAR AO No. 5, the SP for purposes of computing the CNI, must be the *average of the latest available 12-months selling prices prior to the date of receipt of the claim folder by LBP, to be secured from the DA, Bureau of Agricultural Statistics or other appropriate regulatory bodies.* Thus, the selling price of ₱9.00 submitted by private respondent sourced from the NFA (March-August and September-February without indicating the year) and private buyer (March and October 2001) cannot be used as it was not the average obtained within the period referred to in DAR AO No. 5 (July 2000 to May 2001). Besides, such selling price was gathered from Santiago City and not the Municipality of Ramon where the properties are located, contrary to DAR AO No. 5. Said provision also states that the data from the province or region may be used only in the absence of selling prices from the municipality or barangay. We declared in *Land Bank of the Philippines v. Celada* that the DAR was tasked to issue the rules and regulations to carry out the "details" of Section 17 of R.A. No. 6657. It can be safely presumed that the fluctuations in the selling price of *palay* were already taken into consideration since only the *average* of these *available prices* within the 12 months prior to the receipt of the CF, will be used in computing the CNI. Hence, the SAC and CA clearly erred in completely disregarding the data provided by the MARO simply because it contained a notation that the figures indicated for two months (October and November 2000) were not normal due to typhoons.

3. ID.; ID.; ID.; THE NATIONAL IRRIGATION ADMINISTRATION (NIA) CANAL AND ROAD SHOULD BE INCLUDED AS PART OF THE COMPENSABLE AREA.— On the exclusion of the NIA irrigation canal and road, we find untenable petitioner's argument that said portions do not form part of the compensable area. It is true that Item II F of DAR AO No. 5 provides that those improvements introduced by the government, farmer-beneficiaries and other third parties, shall not be paid. However, as correctly ruled by the CA, what is being compensated is not the cost or value of the improvements introduced by the government but the value of the whole land taken under the CARP law. This does not mean that those portions are being separately valued as claimed by petitioner. Moreover, compensating the land upon which those improvements were built is consistent with the principle that the equitable distribution and ownership of land sought to be achieved through CARP is undertaken "with due regard to the rights of landowners to *just compensation*." Petitioner's interpretation of Item II.F of DAR AO No. 5 would only lead to absurd and unjust consequences for the landowner whose landholding – a substantial portion thereof — is not being covered by the CARP and yet, the landowner is deprived of its use while the farmer-beneficiaries benefit from the present improvements (irrigation canal and road) on the property taken. Hence, we fully agree with the private respondent in arguing that: Verily, Petitioner's suggestion that Metraco should not be compensated for the canal and road that are being used by the farmer-tillers notwithstanding that the same are already registered in the name of the Republic of the Philippines is dangerous as it would be tantamount to taking private property without due process of law and without payment of just compensation in violation of the constitution.

4. ID.; ID.; ID.; THE TAKING OF PRIVATE LANDS UNDER THE AGRARIAN REFORM PARTAKES OF THE NATURE OF AN EXPROPRIATION PROCEEDING; TO COMPENSATE IS TO RENDER SOMETHING WHICH IS EQUAL IN VALUE TO THAT TAKEN OR RECEIVED.— We must stress, at this juncture, that the taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding. In a number of cases, we have stated that just compensation in expropriation proceedings

represents the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. To compensate is to render something which is equal in value to that taken or received. In sum, we find petitioner's valuation sufficiently substantiated and in accordance with Section 17 of R.A. No. 6657 and DAR AO No. 5, series of 1998, except that the portions of the landholdings occupied by the NIA water system and road should also be included in the total compensable area.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Delfin B. Samson for DAR.
Earnest A. Soberano for Metraco Tele-Hygienic Services Corp.

D E C I S I O N

VILLARAMA, JR., *J.*:

This is a petition for review on *certiorari* under Rule 45 assailing the Decision[1] dated June 27, 2005 and Resolution[2] dated March 9, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 80441 which affirmed the Decision[3] dated June 23, 2003 of the Regional Trial Court (Special Agrarian Court) of Santiago City, Isabela, Branch 21 in CAR Case No. 21-0636.

The facts are as follows:

Private respondent Metraco Tele-Hygienic Services Corporation (METRACO) is the registered owner of three parcels of agricultural land with an aggregate area of 33.5917 hectares located at San Antonio, Ramon, Isabela and covered by Transfer Certificate of Title (TCT) Nos. T-291208, T-291209

[1] *Rollo*, pp. 35-42. Penned by Associate Justice Roberto A. Barrios (now deceased) and concurred in by Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso.

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

[3] Records, pp. 155-161. Penned by Judge Fe Albano Madrid.

and T-291210. The lands are fully irrigated by the National Irrigation Administration (NIA) and planted with rice.

In July and December 2000, METRACO voluntarily offered to sell the aforesaid lands under the provisions of Republic Act (R.A.) No. 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988. Private respondent's assessment was ₱300,000.00 per hectare. On February 8, 2001, the landowner's offer was referred to petitioner Land Bank of the Philippines (LBP) for valuation.[4] On June 6, 2001, petitioner fixed the just compensation for the subject landholdings,[5] as follows:

TCT No.	Area Acquired	Average Amount Per Hectare	Total
T-291208	15.8036 has.	₱146,935.87	₱2,322,115.71
T-291209	1.5995 has.	145,294.84	232,399.09
T-291210	14.3923 has.	146,935.87	2,114,745.12
TOTAL -	31.7954 has.		**₱4,669,259.92**

Since private respondent rejected the valuation made by petitioner, the latter deposited the amount of compensation, which the former accepted without prejudice to reevaluation and eventual payment of just compensation due for its property. Private respondent then went to the Department of Agrarian Reform Adjudication Board (DARAB)-Region 02 at San Fermin, Cauayan City, Isabela which held summary proceedings for determination of just compensation (JC No. R-II-539-Isa 2001). On December 3, 2001, DAR Provincial Adjudicator Pepito P. Planta issued the following Order[6]:

WHEREFORE, for the reasons above-stated, it is Ordered that the value of the land in issue fixed by respondent LBP be set aside and be fixed at ₱180,000.00 per hectare or the aggregate sum of ₱5,580,000.00 deducting thereof the partial payment already received

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[4] *Id.* at 98-106.

[5] *Id.* at 107-115.

[6] *Id.* at 143-148.

by the petitioner, and directing the respondent LBP to pay the same to the petitioner after submission of all documentary requirements.

SO ORDERED.[7]

The DAR found untenable petitioner's position that the basis of valuation should be the guidelines issued under DAR Administrative Order (AO) No. 5, series of 1998 and findings of the ocular inspection. It said that to do so would contravene the Supreme Court's declaration in *Land Bank of the Philippines v. Court of Appeals*[8] that any formula or guidelines promulgated by the bank is a violation of due process of the Constitution.[9]

When the DAR denied its motion for reconsideration, petitioner instituted before the Special Agrarian Court (SAC) CAR Case No. 21-0636 for determination of just compensation. During the trial, the parties presented their witnesses and documentary evidence.

Faustino Onza, property appraiser of LBP, testified that the Municipal Agrarian Reform Office (MARO) scheduled an ocular inspection of the subject lands on January 24, 2001. During the ocular inspection attended by the representative of the landowner, as well as representatives of MARO, farmer beneficiaries and the Barangay Agrarian Reform Committee (BARC), they gathered data on production and suitability of the lands. These include the number of cavans of *palay* being harvested per hectare, the location of the property and water supply. The lands were situated 7.5 kilometers, more or less, from the *poblacion*, with a NIA water system and planted to *palay* by the farmer beneficiaries. The LBP actually prepared a field investigation report and a land use map for each parcel of land. The production figure obtained was 120 cavans per cropping. The selling price of *palay* (₱6.75 per kg.) was based on the records of the Department of Agriculture (DA) office.

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[7] *Id.* at 148.

[8] G.R. Nos. 118712 & 118745, October 6, 1995, 249 SCRA 149.

[9] Records, p. 147.

As to location, the all-weather road (municipal road) traversing the property was also taken into consideration.[10]

Another witness for LBP, Amante Siazon, Chief of the Claims, Processing and Payment Division of LBP's Agrarian Reform Center, testified that after the landowner's representative, Ceferina Jocson, offered to sell their property, it was placed under the coverage of the CARP (VOS) on December 7, 2000. Upon receipt of the claim for compensation, they prepared the valuation and processing form. In making the initial valuation, they used the formula: Land Valuation (LV) = Capitalized Net Income (CNI) x 90% + Market Value (MV) per Tax Declaration x 10%, which is provided for in DAR AO No. 5. The Annual Gross Production (AGP) is multiplied to the Selling Price (SP) and then further multiplied to .2/.12. The .2 or 20% represents the cost of operation while the .12 refers to the net income of the properties. AGP is gathered from the field investigation, which is 240 cavans per hectare – which was sourced from the landowners, the farmers tilling the lands, and the industry data provided by the DA. Information from these sources was also validated with those coming from farmers tilling the adjoining properties. The SP is based on the average price within 12 months as provided by the DA prior to the coverage of the properties. In this case, the CNI was determined at ₱135,000.00 per hectare. As to the MV, this was provided by the Provincial Assessor's Office which indicates the classification of agricultural land such as Riceland irrigated, Riceland un-irrigated, under the schedule of base unit market values for agricultural lands. The subject properties were classified as irrigated Riceland, first class, with corresponding unit market value of ₱264,000.00 per hectare. Another factor considered in the valuation was location adjustment as indicated in the tax declaration, in which there is a corresponding deduction made regarding the distance of the property to the all-weather road and to the *poblacion*; the guidelines issued by the Provincial Assessor's Office were followed. As shown by the valuation forms, the location adjustments for each parcel were as follows: 93% (TCT Nos.

[10] *Id.* at 80-97; TSN, January 7, 2003, pp. 4-5, 11-23, 36-43.

T-291208 and T-291210) because of 3% and 4% deduction made, as the land traverses a municipal road and it is 8 kilometers from the *poblacion;* and 87% (TCT No. T-291209). Said figures were arrived at based on the findings in the field investigation report on the actual distance of the lot to the municipal road. The points to be deducted depending on distance (kilometer) to all-weather road and to the *poblacion* were based on schedule issued by the Provincial Assessor's Office. The Regional Consumers Price Index (RCPI) came from the National Statistics Office (NSO) which updates the peso value of the property. Based on their computation, the value of the lands are: ₱145,294.84 per hectare for the land covered by TCT No. T-291209, and ₱146,935.87 per hectare for the land covered by TCT Nos. T-291208 and T-291210.[11]

On cross-examination, Siazon admitted that other factors such as current value of properties within the vicinity and potential use were not considered, and that it was the LBP appraiser who actually conducted the ocular inspection and data gathering. He likewise admitted that the initial valuation of the subject lands do not represent the fair market value[12] insofar as the price of the adjoining properties, which is naturally higher. As to the exclusion of the 1.1173 hectares, this pertains to a drainage canal and road based on the subdivision plan.[13]

Private respondent presented as its witness, Ramon A. Galindez, a member of its board of directors. Galindez testified that they rejected the valuation by LBP because it is too low and the lands are classified first class irrigated riceland assessed at ₱264,000.00 per hectare, based on the certification dated September 10, 2001 issued by the Municipal Assessor's Office, and as per the tax declarations. He also presented figures of the property's appraised fair market value given by the different banks in Santiago City, showing higher amount of ₱300,000.00 per hectare. The DARAB likewise set the value of the lands in

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[11] TSN, January 21, 2003, pp. 3, 9-25; TSN, February 4, 2003, pp. 3-39.

[12] TSN, February 12, 2003, pp. 15-18.

[13] *Id.* at 19-25.

its decision at ₱180,000.00 per hectare. With respect to the selling price of *palay*, Galindez said that he himself has been farming for more than ten years and also planted *palay* in his lands situated in other *barangays* and Santiago City. In the year 2001, the price of *palay* is between ₱9.00 and ₱10.00 per kg., as evidenced by receipts dated March 8, 2001 issued by the Republic Cereal Corporation at Santiago City, Isabela showing the prices of dry *palay* he sold at ₱9.50 and ₱9.80 per kg. He further recalled that the government support price for *palay* in 2001 was also between ₱9.00 and ₱10.00 per kg.[14]

In its decision,[15] the SAC recomputed the compensation fixed by LBP by using ₱9.00 as selling price of *palay* per kg. based on the September 25, 2001 Certification by the National Food Authority (NFA) that the government support price for *palay* is ₱10.00 per kg. (March-August) and ₱9.00 per kg. (September-February). Private respondent's witness had testified that he actually sold his *palay* for that price to a private buyer as shown by receipts he presented in court. The SAC also added to the computation the 1.1173 hectares excluded by petitioner — a portion consisting of a drainage canal and a road — stating that these are indispensable part of the entire landholding which the farmer/tiller will necessarily use. The SAC thus decreed:

> WHEREFORE, in the light of the foregoing considerations judgment is hereby rendered DECLARING that the just compensation of the lands to be paid by the Land Bank of the Philippines to the respondent Metraco Tele-Hygenic Services, Corp. is as follows:
>
> For T.C.T. No. T-291208 - ₱3,089,416.13
> For T.C.T. No. T-291209 - ₱ 297,177.50
> For T.C.T. No. T-291210 - ₱2,907,041.87
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> SO ORDERED.[16]

Petitioner moved for reconsideration arguing that the basis of selling price of *palay* used by the court and acquisition of

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[14] TSN, May 13, 2003, pp. 4-25.

[15] Records, pp. 155-161.

[16] *Id.* at 161.

the road and canal were in violation of DAR AO No. 05, series of 1998. The SAC, however, denied the motion.[17]

On appeal, the CA sustained the SAC's computation holding that the NFA certification which stated the government support price for *palay* as ₱9.00 and ₱10.00 per kg., as well as the receipts issued by the Republic Cereal Corporation showing that the buying price of *palay* at the time was between ₱9.50 and ₱9.80 per kg., are recognized by DAR AO No. 5 under Item II.B.1 thereof. The CA noted that the data from the DA thru the certification issued by the Municipal Agrarian Reform Officer (MARO) of Ramon, Isabela, relied upon by petitioner, is unreliable and inaccurate considering that: (1) it did not have figures for the months of July, August and December 2000, as well as for January and May 2001; and (2) it contained abnormal prices for the months of October and November 2000 as shown by the notation therein that "Selling price below normal due to continuous rain and typhoons experienced during these months." As for the inclusion of the irrigation canal and road portions, the CA ruled that while the landowner should not be compensated for the improvements introduced by the government pursuant to Item II.F of DAR AO No. 5, in this case however, what is being compensated is not the cost or value of such improvements but that of the whole land taken under the CARP law.[18]

Its motion for reconsideration having been denied, petitioner filed the present petition contending that the appellate court committed serious errors of law –

I. IN AFFIRMING THE TRIAL COURT'S DECISION USING ₱9.00 AS THE SELLING PRICE OF *PALAY* PER KILO WHICH RESULTED IN THE TRIAL COURT'S COMPUTATION OF ₱185,435.00 PER HECTARE FOR TCT NO. T-291208 AND TCT T-291210 AND AT ₱185[,]794.00 PER HECTARE FOR TCT NO. T-291209;

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[17] *Id.* at 162-167, 186-187.

[18] *Rollo,* pp. 35-42.

II. IN AFFIRMING THE TRIAL COURT'S DECISION IN WHICH A COMPUTATION AND SEPARATE COMPENSATION WAS MADE FOR CERTAIN PORTIONS OF THE SUBJECT LANDHOLDINGS NOT SEPARATELY COMPENSABLE UNDER PERTINENT DAR POLICY REGULATIONS IMPLEMENTING SECTION 17, IN RELATION TO SECTION 49, OF THE CARP LAW (R.A. 6657).[19]

The petition is partly meritorious.

Under Section 1 of Executive Order No. 405, series of 1990, petitioner LBP is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking. Through a notice of voluntary offer to sell (VOS) submitted by the landowner, accompanied by the required documents, the DAR evaluates the application and determines the land's suitability for agriculture. The LBP likewise reviews the application and the supporting documents and determines the valuation of the land. Thereafter, the DAR issues the Notice of Land Valuation to the landowner. In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court.[20]

The LBP's valuation of lands covered by CARL is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of R.A. No. 6657 and the applicable DAR regulations.[21]

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[19] *Id.* at 18.

[20] *Land Bank of the Philippines v. Wycoco,* G.R. Nos. 140160 & 146733, January 13, 2004, 419 SCRA 67, 75-76, citing Administrative Order No. 9, Series of 1990.

[21] *Land Bank of the Philippines v. Luciano,* G.R. No. 165428, November 25, 2009, 605 SCRA 426, 439.

Section 17 of R.A. No. 6657 provides:

SEC. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

In *Land Bank of the Philippines v. Celada*[22] we held that the above provision is implemented by DAR AO No. 5, series of 1998,[23] thus:

While SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that **these factors have been translated into a basic formula by the DAR pursuant to its rule-making powers** under Section 49 of RA No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. **The SAC was at no liberty to disregard the formula which was devised to implement the said provision.**[24] (Emphasis supplied.)

In the case at bar, while the SAC found the formula provided in DAR AO No. 5 applicable in determining the amount of just compensation, it disagreed with petitioner on the correct amount of Selling Price (SP) of *palay* and valuation of the irrigation canal and road. Petitioner contends that as a result of the erroneous application of DAR AO No. 5 by the SAC and CA,

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[22] G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[23] DAR AO No. 05 took effect on May 11, 1998.

[24] *Id.* at 506-507.

the amount of compensation had tremendously and unduly increased from ₱4,669,259.92 to ₱6,293,635.50. The difference of ₱1,624,375.58 would definitely be hurtful to the State's Agrarian Reform Fund, of which petitioner is a mere custodian or trustee.

Private respondent maintains that the CA correctly applied the provisions of DAR AO No. 5 when it read Item II.B with II.B.1 which allows the use of data on selling price coming from other government and private entities "knowledgeable in the concerned industry." Consequently, the government support price of *palay* as certified by the NFA and actual buying price reflected in the two receipts issued by a private buyer, may be used as basis for selling price in computing the CNI, without violating DAR AO No. 5.

The SAC, using ₱9.00 as SP, computed the CNI per hectare as follows:

$$CNI = (AGP \times SP) \times 20\%$$

$$CNI = \frac{(240 \times 50 \times 9.00) \times 20\%}{.12}$$

$$CNI = 180{,}000$$[25]

On the other hand, petitioner's computation used ₱6.75, the average selling price within the 12-months prior to its receipt of private respondent's claim folder (CF), as SP and came up with CNI of ₱135,000.00 per hectare. Petitioner indicated the date of receipt of the CF as June 1, 2001. As to the ₱6.75 per kg. SP, petitioner based it on the following data provided by MARO Rodolfo B. Cabuyadao of Ramon, Isabela:

May 2001	N/A
April 2001	₱7.30
March 2001	7.60
February 2001	8.30
January 2001	N/A
December 2000	N/A
November 2000	4.50

[25] Records, p. 160.

October 2000.....	5.00
September 2000.....	7.80
August 2000.....	N/A
July 2000.....	N/A[26]

The certification issued by the MARO, however, contained a notation that the SP for October and November 2000 was below normal due to continuous rains and typhoons experienced during these months. For that reason, the SAC and CA were of the view that petitioner should not have relied on the data provided by the MARO, and instead used the ₱9.00 government support price reflected in the NFA Certification[27] dated September 25, 2001 and receipts[28] issued by a private entity (Republic Cereal Corporation). The CA was emphatic that DAR AO No. 5 itself recognizes the data coming from other government regulatory agencies and private entities.

We disagree.

Item II of DAR AO No. 5 provides the following guidelines:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

x x x x x x x x x

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[26] *Rollo*, pp. 26-27; records, pp. 116-118.

[27] Records, p. 151.

[28] *Id.* at 149-150.

A.7 In all of the above, the computed value using the applicable formula shall in no case exceed the LO's offer in case of VOS.

The LO's offer shall be grossed up from the date of offer up to the date of receipt of CF by LBP from DAR.

A.8 For purposes of this Administrative Order, the date of receipt of CF by LBP from DAR shall mean the date when the CF is determined by the LBP-LVLCO to be complete with all the required documents and valuation inputs duly verified and validated, and ready for final computation/processing.

x x x x x x x x x

B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{0.12}$$

Where: CNI = Capitalized Net Income

AGP = Annual Gross Production corresponding to the latest available 12-months' gross production immediately preceding the date of FI.

SP = The average of the latest available 12-months' selling prices prior to the date of receipt of the CF by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

x x x x x x x x x

B.1 Industry data on production, cost of operations and **selling price shall be obtained from government/private entities. Such entities shall include, but not [be] limited to, the Department of Agriculture (DA),** the Sugar Regulatory Authority (SRA), the Philippine Coconut Authority (PCA) and other **private persons/entities knowledgeable in the concerned industry.**

B.2 The landowner shall submit a statement of net income derived from the land subject of acquisition. This shall include, among others, total production and cost of operations on a per crop basis, selling price/s (farm gate) and such other data as may be required. These data shall be validated/verified by the Department of Agrarian Reform and Land Bank of the Philippines field personnel. **The actual tenants/farmworkers of the subject property will be primary source of information for purposes of verification or, if not available, the tenants/farmworkers of adjoining property.**

In case of failure by the landowner to submit the statement within fifteen (15) days from the date of receipt of letter-request as certified by the Municipal Agrarian Reform Office (MARO) or the data stated therein cannot be verified/validated, DAR and LBP may adopt any applicable industry data or, in the absence thereof, conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding.

x x x x x x x x x

D. In the Computation of Market Value per Tax Declaration (MV), the most recent tax Declaration (TD) and Schedule of Unit Market Values (SUMV) issued prior to receipt of CF by LBP shall be considered. The Unit Market Value (UMV) shall be grossed up from the date of its effectivity up to the date of receipt of CF by LBP from DAR for processing, in accordance with item II.A.9.

x x x x x x x x x

E. Valuation of Improvements (non-crop) shall be undertaken by LBP.

F. **The landowner shall not be compensated or paid for improvements introduced by third parties such as the government, farmer-beneficiaries or others.**

x x x (Emphasis supplied.)

There being no available information on Comparable Sales (CS), the applicable formula is LV = (CNI x 0.90) + (MV per TD x 0.10). To determine the CNI in this case, the LBP gathered the necessary data on annual gross production (AGP), selling price (SP) of *palay*, net income rate and land use.

As clearly stated in DAR AO No. 5, the SP for purposes of computing the CNI, must be the *average of the latest available 12-months selling prices prior to the date of receipt of the claim folder by LBP, to be secured from the DA, Bureau of Agricultural Statistics or other appropriate regulatory bodies.*[29] Thus, the selling price of ₱9.00 submitted by private respondent sourced from the NFA (March-August and September-February without indicating the year) and private buyer (March and October 2001) cannot be used as it was not the average obtained within the period referred to in DAR AO No. 5 (July 2000 to May 2001). Besides, such selling price was gathered from Santiago City and not the Municipality of Ramon where the properties are located, contrary to DAR AO No. 5. Said provision also states that the data from the province or region may be used only in the absence of selling prices from the municipality or *barangay*.

We declared in *Land Bank of the Philippines v. Celada*[30] that the DAR was tasked to issue the rules and regulations to carry out the "details" of Section 17 of R.A. No. 6657. It can be safely presumed that the fluctuations in the selling price of *palay* were already taken into consideration since only the *average* of these *available prices* within the 12 months prior

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[29] See *Land Bank of the Philippines v. Lim*, G.R. No. 171941, August 2, 2007, 529 SCRA 129.

[30] *Supra* note 22 at 507.

to the receipt of the CF, will be used in computing the CNI. Hence, the SAC and CA clearly erred in completely disregarding the data provided by the MARO simply because it contained a notation that the figures indicated for two months (October and November 2000) were not normal due to typhoons.

On the exclusion of the NIA irrigation canal and road, we find untenable petitioner's argument that said portions do not form part of the compensable area. It is true that Item II F of DAR AO No. 5 provides that those improvements introduced by the government, farmer-beneficiaries and other third parties, shall not be paid. However, as correctly ruled by the CA, what is being compensated is not the cost or value of the improvements introduced by the government but the value of the whole land taken under the CARP law. This does not mean that those portions are being separately valued as claimed by petitioner.

Moreover, compensating the land upon which those improvements were built is consistent with the principle that the equitable distribution and ownership of land sought to be achieved through CARP is undertaken "with due regard to the rights of landowners to *just compensation*." Petitioner's interpretation of Item II.F of DAR AO No. 5 would only lead to absurd and unjust consequences for the landowner whose landholding – a substantial portion thereof — is not being covered by the CARP and yet, the landowner is deprived of its use while the farmer-beneficiaries benefit from the present improvements (irrigation canal and road) on the property taken. Hence, we fully agree with the private respondent in arguing that:

> Verily, Petitioner's suggestion that Metraco should not be compensated for the canal and road that are being used by the farmer-tillers notwithstanding that the same are already registered in the name of the Republic of the Philippines is dangerous as it would be tantamount to taking private property without due process of law and without payment of just compensation in violation of the constitution.[31]

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[31] *Rollo,* p. 258.

We must stress, at this juncture, that the taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding. In a number of cases, we have stated that just compensation in expropriation proceedings represents the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. To compensate is to render something which is equal in value to that taken or received.[32]

In sum, we find petitioner's valuation sufficiently substantiated and in accordance with Section 17 of R.A. No. 6657 and DAR AO No. 5, series of 1998,[33] except that the portions of the landholdings occupied by the NIA water system and road should also be included in the total compensable area.

WHEREFORE, the petition for review on *certiorari* is *PARTLY GRANTED.* The Decision dated June 27, 2005 and Resolution dated March 9, 2006 of the Court of Appeals in CA-G.R SP No. 80441 are hereby *SET ASIDE.* The Court hereby *DECLARES* the valuation made by Land Bank of the Philippines in the total amount of ₱4,669,259.92 as just compensation for the properties of Metraco Tele-Hygienic Services Corporation covered by TCT Nos. T-291208, T-291209 and T-291210 of the Registry of the Province of Isabela, and *ORDERING* it to pay additional compensation for the excluded 1.1173 hectares based on the same formula and computation.

No pronouncement as to costs.

SO ORDERED.

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

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[32] *Land Bank of the Philippines v. Imperial,* G.R. No. 157753, February 12, 2007, 515 SCRA 449, 458-459, citing *Gabatin v. Land Bank of the Philippines,* G.R. No. 148223, November 25, 2004, 444 SCRA 176, 190; *Bank of the Philippine Islands v. Court of Appeals,* G.R. No. 160890, November 10, 2004, 441 SCRA 637, 643; and *National Power Corporation v. Manubay Agro-Industrial Development Corporation,* G.R. No. 150936, August 18, 2004, 437 SCRA 60, 68.

[33] See *Land Bank of the Philippines v. Luciano, supra* note 21.

SECOND DIVISION

[G.R. No. 187534. April 4, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIMA MONTANIR, RONALD NORVA and EDUARDO CHUA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; KIDNAPPING WITH HOMICIDE; CRIME COMMITTED IN CASE AT BAR.— It must be emphasized that the crime committed by the appellants, as ruled by the trial court and affirmed by the CA, is the special complex crime of Kidnapping with Homicide. After the amendment of the Revised Penal Code on December 31, 1993 by Republic Act No. 7659, Article 267 of the Revised Penal Code, now provides: *Kidnapping and serious illegal detention*. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death: 1. If the kidnapping or detention shall have lasted more than three days. 2. If it shall have been committed simulating public authority. 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made. 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer; **The penalty shall be death** where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense. **When the victim is killed or dies as a consequence of the detention** or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. x x x In this particular case, the Information specifically alleges that the appellants wilfully, unlawfully and feloniously **kidnapped** Rafael Mendoza against his will and detained him, thereby depriving him of his liberty and **on the occasion thereof, the death of the victim resulted**. The trial court, in its decision, particularly in the dispositive portion, merely stated that the appellants

were found guilty beyond reasonable doubt of the crime of kidnapping, however, its mention of the phrase, *in accordance with Article 267 of the Revised Penal Code, as amended, this Court hereby imposes the penalty of DEATH on accused Norva and Montanir,* clearly refers to the crime committed as that of the special complex crime of Kidnapping with Homicide. The appellants, therefore, were correctly punished under the last paragraph of Article 267 as the evidence presented during the trial, in its entirety, undoubtedly proves that the death of Rafael Mendoza, although of natural causes, occurred on the occasion of the kidnapping.

2. **ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; EACH CONSPIRATOR IS RESPONSIBLE FOR EVERYTHING DONE BY HIS CONFEDERATES WHICH FOLLOWS INCIDENTALLY IN THE EXECUTION OF A COMMON DESIGN AS ONE OF ITS PROBABLE AND NATURAL CONSEQUENCES EVEN THOUGH IT WAS NOT INTENDED AS PART OF THE ORIGINAL DESIGN.—** In convicting the appellants, the trial court, based on the evidence presented, naturally found the existence of conspiracy among the perpetrators. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Verily, when conspiracy is established, the responsibility of the conspirators is collective, not individual, that render all of them equally liable regardless of the extent of their respective participations, the act of one being deemed to be the act of the other or the others, in the commission of the felony. Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended. Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result. Conspirators are necessarily liable for the acts of another conspirator unless such act differs

radically and substantively from that which they intended to commit. As Judge Learned Hand put it in *United States v. Andolscheck*, "when a conspirator embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them."

3. ID.; ID.; ID.; OWNER OF THE SAFE HOUSE HELD AS A CO-CONSPIRATOR EQUALLY LIABLE FOR THE CRIME OF KIDNAPPING WITH HOMICIDE.— It is also not disputed that the safe house in Ciudad Grande, Valenzuela, where the victims were brought was owned by appellant Eduardo. The trial court was also correct in dismissing the claim of appellant Eduardo that he merely lent his car to Robert and allowed the latter to occupy his house because Robert had been so accommodating to him and had facilitated his loan. x x x Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended. Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result that they are in contemplation of law, charged with intending the result. Conspirators are necessarily liable for the acts of another conspirator even though such act differs radically and substantively from that which they intended to commit. Considering the above disquisitions, there is no doubt that conspiracy existed in the perpetration of the crime. Thus, all of the appellants, having been proven that they each took part in the accomplishment of the original design, are all equally liable for the crime of Kidnapping with Homicide.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BEST DETERMINED BY TRIAL COURTS.— The question of credibility of witnesses is primarily for the trial court to determine. For this reason, its observations and conclusions are accorded great respect on appeal. This rule is variously stated thus: The trial court's assessment of the credibility of

a witness is entitled to great weight. It is conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered. Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, his assessment of the credibility of witnesses deserves high respect by appellate courts.

5. ID.; ID.; ID.; SLIGHT CONTRADICTIONS SERVE TO STRENGTHEN THE CREDIBILITY OF WITNESSES AND PROVE THAT THEIR TESTIMONIES ARE NOT REHEARSED.— Appellants claim that Jonard, a witness for the prosecution, stated in his *Sinumpaang Salaysay* that he was the one who whispered to appellant Ronald to transfer Rosalina to another room so that the latter would have no idea that Rafael was in a critical condition, but during trial, Jonard testified that it was Ronald who instructed him to transfer Rosalina to a different room. Appellants also point out that in the same sworn statement, Jonard averred that he resided in Taguig since October, 1987, which is contrary to what he testified in court that he resided in that same place since 1997. In addition, appellants further argue that in her testimony, Rosalina declared that she was with four men seated at the back of the car when she was brought to Pandi, Bulacan, however, Jonard, in his own testimony, stated that there were four of them including Rosalina seated at the back of the car. A close reading of the above inconsistencies asserted by the appellants show that the same refer only to minor details and collateral matters and do not affect the veracity and weight of the testimonies of the witnesses for the prosecution. What really prevails is the consistency of the testimonies of the witnesses in relating the principal occurrence and positive identification of the appellants. Slight contradictions in fact even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed. They are thus safeguards against memorized perjury.

6. ID.; ID.; ID.; TESTIMONIES IN COURT ARE GIVEN MORE WEIGHT THAN AFFIDAVITS.— Anent the inconsistencies of the contents of the affidavits and that of the testimonies in

court, this Court has already ruled that testimonies in court are given more weight than affidavits. x x x Incidentally, the CA was correct in stating that Jonard was able to explain and reconcile the minor discrepancies in his testimony by saying that he whispered to appellant Ronald that Rafael was in a bad condition and afterwards, it was appellant Ronald who instructed him to transfer Rosalina to another room. x x x The same is true with his inconsistent statements regarding his time of residence in Taguig.

7. ID.; ID.; DEFENSE OF DENIAL; APPELLANT'S BARE DENIAL IS A WEAK DEFENSE THAT BECOMES EVEN WEAKER IN THE FACE OF THE PROSECUTION'S WITNESSES' POSITIVE IDENTIFICATION OF HIM.— A scrutiny of the records show that the trial court did not err in finding conspiracy among the appellants, as they each played a role in the commission of the crime. The trial court correctly found the denial of appellant Dima that he had knowledge of the kidnapping, unbelievable. The appellant's bare denial is a weak defense that becomes even weaker in the face of the prosecution witnesses' positive identification of him. Jurisprudence gives greater weight to the positive narration of prosecution witnesses than to the negative testimonies of the defense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For consideration of this Court is the Decision[1] dated April 22, 2008 of the Court Appeals (CA) in CA- G.R. CR-HC No. 00499, affirming with modification the Decision[2] dated October 28,

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[1] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo, concurring; *rollo* pp. 2-23.

[2] CA *rollo,* pp. 64-88.

2004 of the Regional Trial Court (RTC) of Valenzuela City, Branch 171, finding Appellants Dima Montanir, Ronald Norva and Eduardo Chua, guilty beyond reasonable doubt of the crime of Kidnapping under Article 267 of the Revised Penal Code, as amended.

The records bear the following factual antecedents:

Josie Herrera, Robert Uy, Alicia "a.k.a. Alice" Buenaflor, together with appellants Ronald Norva and Eduardo Chua, on December 17, 1997, concocted a plan to kidnap Rafael Mendoza, and after several days of conducting surveillance on their intended victim, on January 5, 1998, they decided to kidnap Rafael in Ali Mall, Cubao, Quezon City. However, the intended kidnapping failed, because Rafael did not show up at the said place. On February 5, 1998, a second attempt was made, but they encountered an accident before they could even execute their original plan.

Around 5:30 a.m. of February 17, 1998, Alicia called up Rosalina Reyes, a partner of Rafael, to tell her that she wanted to meet her and Rafael at Jollibee, BBB, Valenzuela City to settle the former's loan of ₱350,000.00. She requested Rosalina to bring the land title which she was given as collateral for the said loan.

Rosalina and Rafael arrived at Jollibee ahead of Alicia. Eventually, around 9:15 a.m. of the same date, Alicia showed up outside the store aboard a car. She was with appellant Ronald Norva. Alicia motioned Rosalina and Rafael to approach the car, which the two did as requested. While inside the vehicle, Alicia introduced appellant Ronald as her cousin. Later on, Alicia informed Rosalina and Rafael that she would pay them at her place.

When the car passed by the street where Alicia's house was located, Rosalina asked the former where they were going. Alicia answered that they had to drop by the house of her financier who agreed to redeem her title and substitute as her creditor. Trusting Alicia, Rosalina and Rafael did not protest. They finally reached a house in Ciudad Grande, Valenzuela City.

Thereafter, appellant Ronald alighted from the vehicle and talked to a man inside a store, later identified as Jonard Mangelin. The gate of the house was then opened by appellant Dima. The car proceeded to the garage and Rosalina and Rafael were asked to go inside the house. Rosalina followed Alicia, while Rafael trailed Rosalina as they entered through a kitchen door. They passed by a man (Jessie Doe) who was washing his hands in the sink. While Rosalina was walking behind Alicia, she suddenly heard a dull moan coupled with the sound of stomping feet. She looked back at the direction where the sounds came from and saw Rafael being forcibly dragged inside a room. She decided to look for Rafael and on her way, she saw "Jessie Doe" place his hand on Rafael's mouth and poke a gun at him. Rafael struggled to get free. Rosalina pleaded with "Jessie Doe" to have pity on Rafael because of his existing heart ailment. Appellant Ronald rushed towards her, poked a gun at her mouth, tied her to a bed and warned her not to make any noise. He told her that all they want is her money, upon which, Rosalina said that if they really wanted money, they should untie Rafael, who then appeared to be on the verge of having a heart attack. Rosalina was untied and she immediately rushed to Rafael and began pumping his chest. She asked Jonard, who had just entered the room, to help her pump Rafael's chest while she applied CPR on the latter. Jonard did as told. While CPR was being administered, appellant Dima started removing all of Rafael's personal belongings, which include his ring, wallet, watch and other items inside his pocket, and passed them on to appellant Ronald.

Afterwards, appellant Ronald instructed Jonard to take Rosalina to another room. While inside the room where she was brought, Rosalina begged Jonard to help her escape. Jonard was moved by Rosalina's plea and agreed to help her. During their conversation, Jonard told Rosalina that two women had tipped them off as the kidnap victims. When asked who they were, Jonard refused to reveal their identities.

Rosalina was transferred to the master's bedroom around 12:00 noon because certain female visitors arrived. After the visitors left, Rosalina was returned to the room where she was previously taken. Rosalina asked Jonard about Rafael's condition, to which he replied that Rafael would be brought to the hospital. A little later, at around 1 p.m., Jonard went to check on Rafael and confirmed that he was still alive.

Around 2:00 p.m., Rosalina heard the sound of someone being pummelled. Feeling nervous, she asked Jonard the whereabouts of Rafael and was told that he was brought to the hospital. But unknown to Rosalina, Rafael had just died and his body was placed inside the trunk of a car.

Around 6:30 p.m., Rosalina was informed that she will be brought to another safe house. She was taken to a car and placed at the back seat, together with Jonard and three other men, later identified as Larry, Jack and Boy. The driver of the car was appellant Ronald. Appellant Ronald instructed Jonard to cover Rosalina's head with a jacket which Jonard did. As they were about to leave, the man seated beside Ronald started to talk. Rosalina recognized the voice of Robert. She then lifted the jacket covering her head and was able to confirm that the one talking was Robert. Rosalina cried, "Robert, Robert, why did you do this, we did not do anything to you" and Robert responded, "*Pasensiyahan na lang tayo*."

By 10:00 p.m., they arrived at a certain house in Pandi, Bulacan where there was no electricity. Thus, they lit candles for illumination. Rosalina found the house familiar and concluded that it was Alicia's. Rosalina was brought to a room on the second floor and while inside the room, she was told by one of the men guarding her that one of the leaders wanted to talk to her. Per the leader's instruction, the guard put out the candle light. The man then seated himself beside Rosalina and warned her against escaping as they were a large and armed group. Rosalina recognized the voice as that of Robert's. Before he left the room, Robert gave instructions to Jonard and the other men inside. Meanwhile, the group started digging a pit at the back of the same house near the swimming pool.

Around 3:00 a.m. of the following day (February 18), the group buried Rafael's body in the pit. Thereafter, Robert instructed appellant Ronald to tell Jonard that the latter should kill Rosalina, which Jonard refused to do. Nonetheless, Robert instructed Jonard and the others to guard Rosalina well, as he himself would deal with her upon his return.

Rosalina heard the car leave around 5:00 a.m. of the same day. Sensing that Jonard was sympathetic to her, Rosalina begged him again to help her escape for the sake of her children.

When electricity was restored around 8 p.m., one of the men guarding Rosalina turned off the light inside the room. The room was only illuminated by a light coming from the hallway. Rosalina saw a person wearing a wig and sunglasses enter the room. Rosalina recognized him as Robert. Trying to mimic a woman by modulating his voice, Robert told her that Rafael was in the hospital and that he could still sign a check. He asked Rosalina the whereabouts of the other land titles and the identities of the other financiers whom she knew. Rosalina replied in the negative. Robert angrily poked a gun at her and shouted, "That's impossible," and then left the room. He gave instructions to his members and left.

At 9:00 p.m., Jonard went to Rosalina and told her about Robert's order to kill her, which caused the latter to panic and cry. She then implored the help of Jonard for her escape. Afterwards, Jonard went to his companions Larry, Jack and Boy and told them that he would help Rosalina escape. His companions immediately cocked their guns and an argument ensued. Rosalina talked to them and begged them all to spare her life. One of Jonard's companions told Rosalina that if they would allow her to escape, they too would get into trouble. Taking advantage of the situation, Rosalina suggested that all of them should escape. They all agreed to escape in the early morning.

Around 5:00 a.m., Rosalina, Jonard, Larry, Jack and Boy left the safe house. They walked through a rice field for about 30 minutes and then boarded a jeepney bound for Balagtas,

Bulacan. From Balagtas, they took a bus going to Cubao and arrived at 7:30 a.m. Rosalina pawned her pieces of jewelry for ₱1,500.00 and gave the ₱1,000.00 to Larry, Jack and Boy. The three told Jonard to stay with Rosalina so that she would have a witness and, in case Rosalina would further need their help, left their address with Jonard.

When the three left, Rosalina immediately called Rafael's brother Tito, and related what happened to her and his brother. When Tito asked Jonard which hospital Rafael was brought to, Jonard revealed to Rosalina that Rafael died at the safe house in Ciudad Grande, Valenzuela City. Rosalina called her lawyer, Atty. Teresita Agbi and asked her to meet them at Farmer's, Cubao. When Atty. Agbi arrived, she accompanied them to the Department of Interior and Local Government (DILG) where an investigation was conducted.

The following day, at 4:00 a.m., two groups from the DILG were formed to arrest Alicia, Josie, the appellants, and Robert. Alicia and Josie were not at their homes, while appellants Ronald and Dima were arrested at the residence of Robert. While at the DILG office, Rosalina positively identified appellants Ronald and Dima as her kidnappers. Meanwhile, Jonard accompanied the police authorities to the safe house in Pandi, Bulacan and showed them where the body of Rafael was buried. The remains of Rafael was later on exhumed.

Thereafter, two Informations were filed with the RTC of Valenzuela City (Branch 171), with the following allegations:

Criminal Case No. 123-V-98

That on or about the 17th day of February 1998 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, being then private person, did then and there wilfully, unlawfully and feloniously kidnap one ROSALINA REYES against her will and detained her, thereby depriving her of her liberty for a period of two days.

CONTRARY TO LAW.

Criminal Case No. 124-V-98

That on or about the 17th day of February 1998 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, being then a private person, did then and there wilfully, unlawfully and feloniously kidnap one RAFAEL MENDOZA against his will and detained him, thereby depriving him of his liberty and on the occasion thereof, the death of the victim resulted.

CONTRARY TO LAW.

Upon arraignment, with the assistance of counsel, Jonard and appellants Ronald, Dima and Eduardo, pleaded "not guilty" to the crime charged. Robert Uy, Alice Buenaflor and Jessie Doe remained at-large during the trial of the case. Jonard was later on discharged as a state witness. Afterwards, the trial on the merits ensued.

On October 28, 2004, the trial court rendered judgment against the appellants for the crime of kidnapping, the dispositive portion of which, reads:

WHEREFORE, in view of the foregoing, accused DIMA MONTANIR, RONALD NORVA, and EDUARDO CHUA are hereby found GUILTY beyond reasonable doubt of the crime of kidnapping and in accordance with Article 267 of the Revised Penal Code, as amended, this Court hereby imposes the penalty of DEATH on accused NORVA and MONTANIR. As regards accused CHUA, this Court hereby imposes the penalty of *reclusion perpetua*.

Further, accused Montanir, Norva and Chua are hereby held jointly and severally liable to pay the heirs of Mendoza the amount of Php 71,000.00 in actual damages and Php 50,000.00 as moral damages.

As for accused JOSIE HERRERA, the Court hereby ACQUITS her on reasonable doubt of the charge of kidnapping. Consequently, The Jail Warden of Valenzuela City Jail is hereby ordered to cause the immediate release of the said accused from detention unless she is otherwise being detained for some other legal and lawful cause.

With regard to accused ALICE BUENAFLOR, ROBERT UY and one JESSIE DOE, let the cases against them be ARCHIVED pending their apprehension. Meantime, let an alias warrant issue for their apprehension.

Considering the penalty imposed on accused MONTANIR, NORVA and CHUA, let the entire records of these cases be elevated to the Court of Appeals for appropriate review of the judgment herein rendered.

SO ORDERED.

On automatic review, the CA affirmed the conviction with modification on the penalty imposed, thus:

WHEREFORE, in the light of the foregoing, the impugned Decision is AFFIRMED with MODIFICATION that the penalty of death imposed on accused Montanir and Norva is hereby modified to *reclusion perpetua* to conform to and in accordance with Republic Act No. 9346. Appellants Montanir, Norva and Chua are ordered to pay jointly and severally the amount of ₱50,000.00 as civil indemnity to the heirs of the victims.

Costs against appellants.

SO ORDERED.

Hence, the present appeal.

In their respective Briefs, appellants raised the following assignment of errors:

DIMA MONTANIR:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT DIMA MONTANIR GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.

EDUARDO CHUA:

I.

THE DECISION IS NOT IN ACCORD WITH LAW AND THE EVIDENCE.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING APPELLANT CHUA A CONSPIRATOR TO THE COMMISSION OF KIDNAPPING.

RONALD NORVA:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT RONALD NORVA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.

First of all, it must be emphasized that the crime committed by the appellants, as ruled by the trial court and affirmed by the CA, is the special complex crime of Kidnapping with Homicide. After the amendment of the Revised Penal Code on December 31, 1993 by Republic Act No. 7659, Article 267 of the Revised Penal Code, now provides:

Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer;

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

As expounded in *People v. Mercado*:[3]

In *People v. Ramos*,[4] the accused was found guilty of two separate heinous crimes of kidnapping for ransom and murder committed on July 13, 1994 and sentenced to death. On appeal, this Court modified the ruling and found the accused guilty of the "special complex crime" of kidnapping for ransom with murder under the last paragraph of Article 267, as amended by Republic Act No. 7659. This Court said:

> x x x This amendment introduced in our criminal statutes the concept of 'special complex crime' of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: **Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by RA No. 7659.**

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[3] 400 Phil. 37, 82-83 (2000). (Emphasis supplied.)

[4] G.R. No. 118570, October 12, 1998, 297 SCRA 618.

This Court further discussed the nature of the special complex crime of Kidnapping with Homicide in *People v. Larrañaga*,[5] thus:

A discussion on the nature of special complex crime is imperative. **Where the law provides a single penalty for two or more component offenses, the resulting crime is called a special complex crime.** Some of the special complex crimes under the Revised Penal Code are (1) **robbery with homicide,**[6] (2) robbery with rape,[7] (3) kidnapping with serious physical injuries,[8] (4) kidnapping with murder or homicide,[9] and (5) rape with homicide.[10] In a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints. As earlier mentioned, R.A. No. 7659 amended Article 267 of the Revised Penal Code by adding thereto this provision: "When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed; and that this provision gives rise to a special complex crime. In the cases at bar, particularly Criminal Case No. CBU-45303, the Information specifically alleges that the victim Marijoy was raped "on the occasion and in connection" with her detention and was killed "subsequent thereto and on the occasion thereof." Considering that the prosecution was able to prove each of the component offenses, appellants should be convicted of the special complex crime of kidnapping and serious illegal detention with homicide and rape. It appearing from the overwhelming evidence of the prosecution that there is a "direct relation, and intimate connection"[11] between the kidnapping, killing and raping of Marijoy, rape cannot be considered merely as an aggravating circumstance

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[5] G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530, 580-581. (Emphasis supplied.)

[6] Art. 294, par. 1.

[7] Art. 294, par. 2.

[8] Art. 267, par. 3.

[9] Art. 267, last par.

[10] Art. 335.

[11] *People v. Adriano*, G.R. Nos. L-25975-77, January 22, 1980.

but as a component offense forming part of the herein special complex crime. It bears reiterating that in *People vs. Ramos*,[12] and *People vs. Mercado*,[13] interpreting Article 267, we ruled that "where the person killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Article 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Article 267." The same principle applies here. The kidnapping and serious illegal detention can no longer be complexed under Article 48, nor be treated as separate crime but shall be punished as a special complex crime. **At any rate, the technical designation of the crime is of no consequence in the imposition of the penalty considering that kidnapping and serious illegal detention if complexed with either homicide or rape, still, the maximum penalty of death shall be imposed**.

In this particular case, the Information specifically alleges that the appellants wilfully, unlawfully and feloniously **kidnapped** Rafael Mendoza against his will and detained him, thereby depriving him of his liberty and **on the occasion thereof, the death of the victim resulted**. The trial court, in its decision, particularly in the dispositive portion, merely stated that the appellants were found guilty beyond reasonable doubt of the crime of kidnapping, however, its mention of the phrase, *in accordance with Article 267 of the Revised Penal Code, as amended, this Court hereby imposes the penalty of DEATH on accused Norva and Montanir*, clearly refers to the crime committed as that of the special complex crime of Kidnapping with Homicide. The appellants, therefore, were correctly punished under the last paragraph of Article 267 as the evidence presented during the trial, in its entirety, undoubtedly proves that the death of Rafael Mendoza, although of natural causes, occurred on the occasion of the kidnapping.

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[12] *Supra* note 4.

[13] *Supra* note 3.

Delving on the arguments presented by the appellants in this Court, their corresponding briefs pose a single common argument – the prosecution did not present sufficient evidence to prove beyond reasonable doubt that they committed the crime charged against them. In particular, they questioned the inconsistent testimonies of the witnesses for the prosecution. According to them, the said inconsistent statements from the witnesses, tarnish their credibility.

This Court finds otherwise.

The question of credibility of witnesses is primarily for the trial court to determine.[14] For this reason, its observations and conclusions are accorded great respect on appeal.[15] This rule is variously stated thus: The trial court's assessment of the credibility of a witness is entitled to great weight. It is conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.[16] Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, his assessment of the credibility of witnesses deserves high respect by appellate courts.[17]

Appellants claim that Jonard, a witness for the prosecution, stated in his *Sinumpaang Salaysay* that he was the one who whispered to appellant Ronald to transfer Rosalina to another room so that the latter would have no idea that Rafael was in a critical condition, but during trial, Jonard testified that it was Ronald who instructed him to transfer Rosalina to a different room. Appellants also point out that in the same sworn statement, Jonard averred that he resided in Taguig since October, 1987,

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[14] *People v. Mercado, supra* note 13, at 71, citing *People v. Dianos*, 297 SCRA 191 (1998).

[15] *Id.*, citing *People v. Manuel*, 298 SCRA 184 (1998).

[16] *Id.*, citing *People v. Lozano*, 296 SCRA 403 (1998).

[17] *Id.*, citing *People v. Abangin*, 297 SCRA 655 (1998).

which is contrary to what he testified in court that he resided in that same place since 1997. In addition, appellants further argue that in her testimony, Rosalina declared that she was with four men seated at the back of the car when she was brought to Pandi, Bulacan, however, Jonard, in his own testimony, stated that there were four of them including Rosalina seated at the back of the car.

A close reading of the above inconsistencies asserted by the appellants show that the same refer only to minor details and collateral matters and do not affect the veracity and weight of the testimonies of the witnesses for the prosecution. What really prevails is the consistency of the testimonies of the witnesses in relating the principal occurrence and positive identification of the appellants. Slight contradictions in fact even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed.[18] They are thus safeguards against memorized perjury.[19]

Anent the inconsistencies of the contents of the affidavits and that of the testimonies in court, this Court has already ruled that testimonies in court are given more weight than affidavits, thus:

x x x Affidavits are not entirely reliable evidence in court due to their incompleteness and the inaccuracies that may have attended their formulation.[20] In general, such affidavits are not prepared by the affiants themselves but by another person (*i.e.*, investigator) who may have used his own language in writing the statement or misunderstood the affiant or omitted material facts in the hurry and impatience that usually attend the preparation of such affidavits. As this Court has often said:

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

[19] *Id.*, citing *People v. Cleopas*, 384 Phil. 286 (2000).

[20] *Id.* at 75, citing *People v. Rivera*, 295 SCRA 99, 109 (1998).

> **An affidavit, "being taken ex-parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion, and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject."**[21]
>
> We have too much experience of the great infirmity of affidavit evidence. When the witness is illiterate and ignorant, the language presented to the court is not his; it is; and must be, the language of the person who prepares the affidavit; and it may be, and too often is, the expression of that person's erroneous inference as to the meaning of the language used by the witness himself; and however carefully the affidavit may be read over to the witness, he may not understand what is said in a language so different from that which he is accustomed to use. Having expressed his meaning in his own language, and finding it translated by a person on whom he relies, into language not his own, and which he does not perfectly understand, he is too apt to acquiesce; and testimony not intended by him is brought before the court as his.' (2 Moore on Facts, Sec. 952, p. 1105; *People v. Timbang*, 74 Phil. 295, 299).[22]

For this reason, **affidavits have generally been considered inferior to testimony given in open court**.[23]

Incidentally, the CA was correct in stating that Jonard was able to explain and reconcile the minor discrepancies in his testimony by saying that he whispered to appellant Ronald that Rafael was in a bad condition and afterwards, it was appellant Ronald who instructed him to transfer Rosalina to another room, thus:

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[21] *Id.*, citing *People v. Resagaya*, 153 Phil. 634, 643 (1973) and *People v. Alcantara*, 144 Phil. 623, 633 (1970). (Emphasis supplied.)

[22] *Id.* at 74, citing *People v. Geguira*, 328 SCRA 11 (2000).

[23] *Id.* at 75-76, citing *People v. Agbayani*, 348 Phil. 341, 367 (1998), citing *People v. Marcelo*, 223 SCRA 24, 36 (1993) and *People v. Enciso*, 223 SCRA 675, 686 (1993).

Atty. Basco:

Referring to the same statement, Mr. Witness, on page 20 of the TSN dated February 24, 1999 referring to the same statement, Mr. Witness, in your statement here when asked:

Q. Then what happened, Mr. Witness, when you answered in the manner? And your answer was:
A Ronald Norva told me, "*Pare*, the old man is in bad condition, you better transfer Mrs. Reyes to another room so that she could not see the condition of the old man."

Q. So which is which Mr. Witness? It was you who gave order or instruction to Mr. Ronald Norva or it was he who gave instruction?

Atty. Gabi: Can we have the translation of that statement?

Atty. Basco: That is a very inconsistent statement of the witness?

A: This is like this, ma'am.

Atty. Basco: Just answer my question. Which is which, Mr. Witness? Which is the truth, your *salaysay* or your testimony on February 24 in open court?

A: **The two are true, ma'am, because when I whispered to him that the old man was in a bad condition he gave me instruction to transfer Mrs. Reyes to another room.**[24]

The same is true with his inconsistent statements regarding his time of residence in Taguig, thus:

Q. Mr. Witness, you said in your Sinumpaang Salaysay of February 19, 1998 that you were residing in Taguig at Maharlika Village sometime in October 1987? Do you confirm that?

Atty. Mendoza:

May we ask for the translations, Your Honor.

A. No, sir, the actual year is 1997, not 1987.

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[24] TSN, June 22, 1999, p. 37. (Emphasis supplied.)

Q. So you are correcting your answer in your *salaysay* of February 19, 1998 under paragraph No. 13 wherein you answered: "*Ako po ay nakikitira sa kaibigan kong si Ting sa Muslim Area, Maharlika Village, Taguig, Metro Manila nuong buwan ng Oktubre, 1987*." You are changing the 1987 to 1997?

A. **The truth is 1997**, sir.[25]

Apellant Dima, in his Brief, insists that the prosecution was not able to establish his participation in the commission of the crime because he was merely the house helper of the safe house in Ciudad Grande, Valenzuela, when the kidnappers and the victims arrived. In the same vein, appellant Ronald asserts that there was no convincing evidence presented by the prosecution that will point to his clear participation in the crime because he was just the driver of the car that brought the victims to the place where the latter were kept. Appellant Eduardo also insists that he was not a participant in the offense charged in the Information. Basically, the appellants deny any participation in the kidnapping.

In convicting the appellants, the trial court, based on the evidence presented, naturally found the existence of conspiracy among the perpetrators. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[26] Verily, when conspiracy is established, the responsibility of the conspirators is collective, not individual, that render all of them equally liable regardless of the extent of their respective participations, the act of one being deemed to be the act of the other or the others, in the commission of the felony.[27] Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of

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[25] TSN, June 30, 1999, pp. 3-4. (Emphasis supplied.)

[26] *People v. Castro,* 434 Phil. 206, 221 (2002).

[27] *Id.*

conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[28] Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result.[29] Conspirators are necessarily liable for the acts of another conspirator unless such act differs radically and substantively from that which they intended to commit.[30] As Judge Learned Hand put it in *United States v. Andolscheck*,[31] "when a conspirator embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them."

A scrutiny of the records show that the trial court did not err in finding conspiracy among the appellants, as they each played a role in the commission of the crime. The trial court correctly found the denial of appellant Dima that he had knowledge of the kidnapping, unbelievable. The appellant's bare denial is a weak defense that becomes even weaker in the face of the prosecution witnesses' positive identification of him. Jurisprudence gives greater weight to the positive narration of prosecution witnesses than to the negative testimonies of the defense.[32] The trial court ruled:

> As for accused Montanir, again, this Court finds the testimonies of prosecution witnesses more credible than his testimony applying the same principle that evidence to be believed must not only proceed from a mouth of a credible witness but must be credible in itself, such that the common experience and observation of mankind can show it as probable under the circumstances.

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[28] *People v. Bisda*, 454 Phil. 194, 218 (2003).

[29] *Id.*, citing *Ingram v. United States*, 259 F. 2d. 886 (1958).

[30] *Id.*, citing *Pring v. Court of Appeals*, 138 SCRA 185 (1985).

[31] *Id.*, citing 142 F. 2d. 503 (1944).

[32] *People v. Kulais, et al.,* 354 Phil. 565, 592 (1998), citing *People v. Angeles*, 218 SCRA 352, (1993); *People v. Guibao*, 217 SCRA 64, (1993); *People v. Mendoza*, 210 SCRA 517, (1992); *People v. Bausing*, 199 SCRA 355, (1991); *People v. Bacatcat*, 188 SCRA 175, (1990).

Certainly, this Court is not convinced by accused Montanir's claim that he was at Ciudad Grande because he was a house boy of accused Chua after he admitted the circumstances under which he has to live there a few days before the victims were brought there.

To begin with, this Court does not buy accused Montanir's explanation that he transferred to Chua because he was looking for a permanent job is hardly credible because he himself admitted that when he was brought by accused Uy to the residence of accused Chua at Ciudad Grande, it was the understanding that it would be accused Uy who would be paying his salary. Why would accused Uy pay the salary of accused Montanir if he was to work as a house boy of accused Chua? Evidently, the only plausible reason why accused Uy would pay the salary of accused Montanir is because he was actually working for the former and only posted in the house of accused Chua at Ciudad Grande to play his part in the execution of the planned kidnapping. This conclusion is bolstered by accused Montanir's admission that he never even spoke with accused Chua during all those times that he stayed at accused Chua's residence as in fact, he took orders from accused Uy.

Moreover, this Court finds it rather perplexing that accused Montanir would suddenly go back to the house of accused Uy on 19 February 1998 on the shallow reason that he had no companion at Ciudad Grande when precisely he said he was hired as a caretaker thereat while the regular boy was on vacation.[33]

The above conclusion was bolstered by the positive identification of the same appellant and his exact participation in the execution of the crime, by the witnesses for the prosecution, thus:

WITNESS JONARD

Q Could you tell this Honorable Court what happened, Mr. Witness?

A When the four (4) entered after ten (10) minutes I heard like a commotion inside the house.

Q Then when you heard the commotion, Mr. Witness, what did you do?

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[33] CA *rollo*, pp. 130-131.

A What I did was I went out of the store to peep thru the window near the lavatory.

Q And what did you see, Mr. Witness?
A **I saw Jess and Dems poking a gun to (sic) Mr. Mendoza**.

Q Then what happened, Mr. Witness, when they poked a gun?
A When they poked a gun and placed the hands of Mr. Mendoza at his back they forcibly entered the room.[34]

WITNESS ROSALINA

Q And then what happened, Ms. Witness?
A And suddenly Jonard Mangelin entered.

Q And what happened?
A I pleaded to him to help me in pumping.

Q What did he do?
A And he helped me.

Q After helping you pumping Mr. Mendoza (sic), what happened to Mr. Mendoza?
A **While we were pumping Mr. Mendoza's chest, Dima Montanir was busy removing the things of Mr. Mendoza.**

Q When you said things to which are you referring to?
A His wallet, watch, ring and all the things in his pocket and gave it to Ronald Norva.[35]

x x x x x x x x x

A When we returned to the DILG, the persons arrested were already there and when I saw them I recognized them that they were the ones.

Q Could you tell us the people whom you said were there?
A **Dima Montanir**.

Q Can you point to him?

(Witness pointing to a man inside the Courtroom, whom when asked his name, answered: Dima Montanir).

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[34] TSN, February 24, 1999, pp. 12-13. (Emphasis supplied.)

[35] TSN, July 7, 1998, pp. 21-22. (Emphasis supplied.)

Q And who else, Ms. Witness?
A Ronald Norva.

Q Can you point to him also?

(Witness pointing to a man inside the Courtroom whom when asked his name, answered: Ronald Norva).

Q Then what happened, Ms. Witness, after you were able to recognize them?
A I told that they were the ones.[36]

In like manner, appellant Eduardo's denial that he participated in the offense charged does not outweigh the testimonies of the witnesses positively identifying him as one of the culprits, thus:

WITNESS JONARD

Q Did you follow the instruction, Mr. Witness?
A Yes, ma'am.

Q Why did you follow the instruction?
A Because they are my Boss.

Q When you said they are my Boss, to whom, Mr. Witness, are you referring to?
A Ronald Norva, Robert Uy, Eduardo Chua, Alice Buenaflor and Josie Herrera.

Q You mentioned the name of Josie Herrera, was she there at the vicinity?
A She was not there when the incident happened on February 17, 1998.

Q Why did you include the name of Josie Herrera as one of your bosses, Mr. Witness?
A Because, ma'am. On December 19, 1997 at the middle of that month, Josie Herrera tipped to the group that Mr. Rafael Mendoza is a good victim because he has lots of money and engaged in a lending business.

Q Were you there when she tipped the person of Mr. Mendoza?
A Yes, ma'am.

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[36] TSN dated July 20, 1998, pp. 19-20. (Emphasis supplied.)

Q Where was this, Mr. Witness?
A At the house of Robert Uy.

Q Where was the house of Mr. Robert Uy, Mr. Witness?
A Candido Homes Subdivision, West Fairview, Quezon City.

Q That was on (sic) the middle of December, 1997?
A Yes, ma'am.

Q Mr. Witness, if this Josie Herrera whom you have referred as one of your Bosses is around this courtroom, could you please point to her?

(Witness pointing to a lady inside the Courtroom whom when asked her name, answered: Josie Herrera).

Q You also mentioned the name of Eduardo Chua as one of your bosses, why do you say so that he was one of your bosses?
A Because they were the ones planning how they could get Mr. Mendoza.

Q And who were these people planning, Mr. Witness?
A The five (5) of them, ma'am.

Q Who are these five (5), Mr. Witness?
A Robert Uy, Ronald, Alice, Josie Herrera and Eduardo Chua.

Q And where did this happen, Mr. Witness?
A When Josie Herrera tipped to the group on that December, the group made a surveillance to be familiarized with the face of Mr. Mendoza and Mrs. Reyes.

Q And all the time, Mr. Witness, where was (sic) this happened when you said they were planning?
A At the house of Robert Uy.

Q Did the surveillance took (sic) place, Mr. Witness?
A Yes, ma'am.[37]

x x x x x x x x x

Q And where did you count the surveillance, Mr. Witness?
A Ali Mall, at Cubao, Quezon City.

Q And what was the result of your surveillance, Mr. Witness?

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[37] TSN, February 24, 1999, pp. 35-38. (Emphasis supplied.)

A They saw the victims Mr. Mendoza and Mrs. Reyes. Robert Uy pointed to the two (2) as our victims.

Q Aside from the planning and the surveillance, Mr. Witness, what else took place?
A On January 3, 1998 the first stage of the kidnapping will took (sic) place on January 5, 1998 because they want to make it quick.

Q Was (sic) the kidnapping take place at that time, Mr. Witness?
A Yes, ma'am.

Q On January 5, 1998?
A No, ma'am, January 5, that was the first try to kidnap them when we went to Ali Mall but we were not able to see them.

Q You said that there was a first try, was there another try, Mr. Witness?
A Yes, ma'am.

Q When was that, Mr. Witness?
A On February 5, 1998.

Q What happened? Was that agreed upon by the group, Mr. Witness?
A Yes, ma'am.

Q Who were these people in the group, Mr. Witness?
A Alice Buenaflor, Robert Uy, Ronald Norva, Eduardo Chua and Josie Herrera.

Q And did the kidnapping take place on the second try, Mr. Witness?
A We were not able to take them, ma'am.

Q Then what happened, Mr. Witness?
A On February 5, 1998, on our second try to kidnap them, we were not able to get them because in Ali Mall the car of Alice Buenaflor was bumped by a taxi.

Q Was there another try after the February 5 try, Mr. Witness?
A On that February 5, when we were not able to take them; they changed the plan.

Q And who participated in the plan, Mr. Witness?
A Eduardo Chua, Robert Uy, Ronald, Alice Buenaflor and Josie Herrera.

Q Is she the same Josie Herrera whom you identified earlier, Mr. Witness?
A Yes, ma'am.

Q Then what happened, Witness?
A After the second try, we were not able to take them, so the plan was changed.

Q What was the plan that was changed? What was the new plan?
A They were the ones who knew it. They were the ones planning and I was only being utilized by the syndicate.[38]

It must always be remembered that between positive and categorical testimony which has a ring of truth to it on the one hand, and a bare denial on the other, the former generally prevails.[39]

It is also not disputed that the safe house in Ciudad Grande, Valenzuela, where the victims were brought was owned by appellant Eduardo. The trial court was also correct in dismissing the claim of appellant Eduardo that he merely lent his car to Robert and allowed the latter to occupy his house because Robert had been so accommodating to him and had facilitated his loan, thus:

Regarding the criminal liability of accused Chua, while it is conceded that the said accused was nowhere in the actual scene of the incident, this Court nonetheless finds the said accused guilty of kidnapping as one of the conspirators to the commission of the felony who participated by furnishing the vehicle used in abducting the victims and the house where they were held captive and where Mendoza died.

Again, this Court applied the time-honored principle that evidence to be believed must come from the mouth of a credible witness which accused Chua is not. Indeed, this Court finds no iota of truth on the protestation of accused Chua that he knew nothing of accused Uy's plans. It is simply too good to be true that he allowed Mangelin and accused Montanir to stay at his house to guard it and attend to his store while his caretakers were having a vacation. Neither could

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[38] *Id.* at 38-41. (Emphasis supplied.)

[39] *People v. Waggay*, G.R. No. 98154, February 9, 1993, 218 SCRA 742, 749; *People v. Andasa*, G.R. No. 101022, February 27, 1992, 206 SCRA 636.

this Court find cogent reason why accused Chua would allow accused Uy to use his vehicle and house totally oblivious of any plan/design or purpose of accused Uy. Nor is it credible that accused Chua would allow accused Uy to use his vehicle just to follow up his loan application and then after the same had been released he (accused Chua) did not come home either to Santa Maria, Bulacan or to Ciudad Grande, instead, he went straight to the residence of accused Uy, waited for him until the wee hours of the morning of the following day, 18 February 1998, only to tell accused Uy he was going home.

It is also bewildering to this Court why immediately after receiving the money he borrowed, he would spend it in going to Davao with his daughter on 18 February 1988, without any previous plan whatsoever and suspiciously, upon invitation of accused Uy who had known by then that one of the victims, Mendoza, had died in the course of the kidnapping.

Truly, all of the foregoing facts when taken together with the testimonies of Mangelin and Montanir unequivocally indicate accused Chua's complicity with the criminal design of accused Uy and dissolves the said accused's plea of innocence.[40]

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design.[41] Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[42] Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result that they are in contemplation of law, charged with intending the result.[43] Conspirators are necessarily liable for the acts of

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[40] CA *rollo*, p. 195.

[41] *People v. Pagalasan*, 452 Phil. 341, 364 (2003), citing 15A *Corpus Juris Secundum*, Conspiracy, p. 828.

[42] *Id.*

[43] *Id.* at 364-365, citing *Ingram v. United States*, *supra* note 29.

another conspirator even though such act differs radically and substantively from that which they intended to commit.[44]

Considering the above disquisitions, there is no doubt that conspiracy existed in the perpetration of the crime. Thus, all of the appellants, having been proven that they each took part in the accomplishment of the original design, are all equally liable for the crime of Kidnapping with Homicide.

Lastly, this Court finds no error in the CA's modification of the penalty imposed by the trial court. The penalty imposed by the trial court, which is Death is now reduced to *reclusion perpetua* in accordance with Republic Act No. 9346.[45]

WHEREFORE, the Decision dated April 22, 2008 of the Court Appeals, affirming with modification the Decision dated October 28, 2004 of the Regional Trial Court (RTC) of Valenzuela City, Branch 171 is hereby *AFFIRMED,* with further *MODIFICATION* that all the appellants herein are equally found *GUILTY* of the special complex crime of Kidnapping with Homicide.

SO ORDERED.

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

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[44] *Id.* at 365, citing *Pring v. Court of Appeals*, *supra* note 30.

[45] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[*] Designated as an additional member in lieu of Associate Justice Eduardo Antonio B. Nachura, per Special Order No. 978, dated March 30, 2011.

THIRD DIVISION

[G.R. No. 190823. April 4, 2011]

DOMINGO CARABEO, *petitioner, vs.* **SPOUSES NORBERTO and SUSAN DINGCO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; ABSENCE OF TECHNICAL BOUNDARIES OF THE PROPERTY IN THE CONTRACT DID NOT RENDER THE SALE VOID.— That the *kasunduan* did not specify the technical boundaries of the property did not render the sale a nullity. The requirement that a sale must have for its object a determinate thing is satisfied as long as, at the time the contract is entered into, the object of the sale is capable of being made determinate without the necessity of a new or further agreement between the parties. As the above-quoted portion of the *kasunduan* shows, there is no doubt that the object of the sale is determinate.

2. REMEDIAL LAW; ACTIONS; DEATH OF A PARTY; AN ACTION SURVIVES UPON THE DEATH OF A PARTY WHERE IT INVOLVES PROPERTY RIGHTS.— In the present case, respondents are pursuing a property right arising from the *kasunduan*, whereas petitioner is invoking nullity of the *kasunduan* to protect his proprietary interest. Assuming *arguendo*, however, that the *kasunduan* is deemed void, there is a corollary obligation of petitioner to return the money paid by respondents, and since the action involves property rights, it survives.

3. ID.; ID.; ID.; EFFECT WHERE THE TRIAL COURT WAS NOT INFORMED OF A PARTY'S DEATH.— It bears noting that trial on the merits was already concluded *before* petitioner died. Since the trial court was not informed of petitioner's death, it may not be faulted for proceeding to render judgment without ordering his substitution. Its judgment is thus valid and binding upon petitioner's legal representatives or successors-in-interest, insofar as his interest in the property subject of the action is concerned.

4. ID.; ID.; ID.; UPON DEATH OF A PARTY, THE COUNSEL WAS IMMEDIATELY DIVESTED OF AUTHORITY TO REPRESENT THE DECEASED CLIENT; EFFECT ON THE APPEAL.— In another vein, the death of a client immediately divests the counsel of authority. Thus, in filing a Notice of Appeal, petitioner's counsel of record had no personality to act on behalf of the already deceased client who, it bears reiteration, had not been substituted as a party after his death. The trial court's decision had thereby become final and executory, no appeal having been perfected.

APPEARANCES OF COUNSEL

Bernaldo Mirador Law Offices for petitioner.

Ortiguera Zuniga Pomer Salaria Sison-Panganiban for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

On July 10, 1990, Domingo Carabeo (petitioner) entered into a contract denominated as *"Kasunduan sa Bilihan ng Karapatan sa Lupa"*[1] (*kasunduan)* with Spouses Norberto and Susan Dingco (respondents) whereby petitioner agreed to sell his rights over a 648 square meter parcel of unregistered land situated in *Purok* III, Tugatog, Orani, Bataan to respondents for ₱38,000.

Respondents tendered their initial payment of ₱10,000 upon signing of the contract, the remaining balance to be paid on September 1990.

Respondents were later to claim that when they were about to hand in the balance of the purchase price, petitioner requested them to keep it first as he was yet to settle an on-going "squabble" over the land.

Nevertheless, respondents gave petitioner small sums of money from time to time which totaled ₱9,100, on petitioner's request

[1] Records, p. 6.

according to them; due to respondents' inability to pay the amount of the remaining balance in full, according to petitioner.

By respondents' claim, despite the alleged problem over the land, they insisted on petitioner's acceptance of the remaining balance of ₱18,900 but petitioner remained firm in his refusal, proffering as reason therefor that he would register the land first.

Sometime in 1994, respondents learned that the alleged problem over the land had been settled and that petitioner had caused its registration in his name on December 21, 1993 under Transfer Certificate of Title No. 161806. They thereupon offered to pay the balance but petitioner declined, drawing them to file a complaint before the *Katarungan Pambarangay*. No settlement was reached, however, hence, respondent filed a complaint for specific performance before the Regional Trial Court (RTC) of Balanga, Bataan.

Petitioner countered in his Answer to the Complaint that the sale was void for lack of object certain, the *kasunduan* not having specified the metes and bounds of the land. In any event, petitioner alleged that if the validity of the *kasunduan* is upheld, respondents' failure to comply with their reciprocal obligation to pay the balance of the purchase price would render the action premature. For, contrary to respondents' claim, petitioner maintained that they failed to pay the balance of ₱28,000 on September 1990 to thus constrain him to accept installment payments totaling ₱9,100.

After the case was submitted for decision or on January 31, 2001,[2] petitioner passed away. The records do not show that petitioner's counsel informed Branch 1 of the Bataan RTC, where the complaint was lodged, of his death and that proper substitution was effected in accordance with Section 16, Rule 3, Rules of Court.[3]

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[2] Petitioner's Death Certificate is appended as Annex "M" to the petition for review, *rollo*, p. 105

[3] *Section 16. Death of party; duty of counsel*. — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be

By Decision of February 25, 2001,[4] the trial court ruled in favor of respondents, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering:

1. The defendant to sell his right over 648 square meters of land pursuant to the contract dated July 10, 1990 by executing a Deed of Sale thereof after the payment of ₱18,900 by the plaintiffs;

2. The defendant to pay the costs of the suit.

SO ORDERED.[5]

Petitioner's counsel filed a Notice of Appeal on March 20, 2001.

By the herein challenged Decision dated July 20, 2009,[6] the Court of Appeals **affirmed** that of the trial court.

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the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (16a, 17a)

[4] *Rollo*, pp. 71-79.

[5] *Id.* at 78-79.

[6] Penned by Associate Justice Jose C. Reyes, with the concurrence of Associate Justices Martin S. Villarama, Jr. (now Supreme Court Associate Justice) and Normandie B. Pizzaro, *id.* at 28-36.

Petitioner's motion for reconsideration having been denied by Resolution of January 8, 2010, the present petition for review was filed by Antonio Carabeo, petitioner's son,[7] faulting the appellate court:

(A)

… in holding that the element of a contract, *i.e.*, an object certain is present in this case.

(B)

… in considering it unfair to expect respondents who are not lawyers to make judicial consignation after herein petitioner allegedly refused to accept payment of the balance of the purchase price.

(C)

… in upholding the validity of the contract, "Kasunduan sa Bilihan ng Karapatan sa Lupa," despite the lack of spousal consent, (underscoring supplied)

and proffering that

(D)

[t]he death of herein petitioner causes the dismissal of the action filed by respondents; respondents' cause of action being an action *in personam*. (underscoring supplied)

The petition fails.

The pertinent portion of the *kasunduan* reads:[8]

x x x x x x x x x

Na ako ay may isang partial na lupa na matatagpuan sa Purok 111, Tugatog, Orani, Bataan, na may sukat na 27 x 24 metro kuwadrado, ang nasabing lupa ay may sakop na dalawang punong santol at isang punong mangga, kaya't ako ay nakipagkasundo

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[7] Rosita's Death Certificate appended to the petition for review as Annex "M-1", *id.* at 106.

[8] *Heirs of Romana Ingjug-Tiro, et al., v. Spouses Casal, et al.*, G.R. No. 134718, August 20, 2001.

sa mag-asawang Norby Dingco at Susan Dingco na ipagbili sa kanila ang karapatan ng nasabing lupa sa halagang ₱38,000.00.

x x x (underscoring supplied)

That the *kasunduan* did not specify the technical boundaries of the property did not render the sale a nullity. The requirement that a sale must have for its object a determinate thing is satisfied as long as, at the time the contract is entered into, the object of the sale is capable of being made determinate without the necessity of a new or further agreement between the parties.[9] As the above-quoted portion of the *kasunduan* shows, there is no doubt that the object of the sale is determinate.

Clutching at straws, petitioner proffers lack of spousal consent. This was raised only on appeal, hence, will not be considered, in the present case, in the interest of fair play, justice and due process.[10]

Respecting the argument that petitioner's death rendered respondents' complaint against him dismissible, *Bonilla v. Barcena*[11] enlightens:

The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the **causes of action which survive**, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the **causes of action which do not survive**, the injury complained of is to the person, the property and rights of property affected being incidental. (emphasis and underscoring supplied)

In the present case, respondents are pursuing a property right arising from the *kasunduan*, whereas petitioner is invoking nullity of the *kasunduan* to protect his proprietary interest. Assuming *arguendo*, however, that the *kasunduan* is deemed void, there

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[9] CIVIL CODE, Article 1460.

[10] *Philippine Commercial and International Bank v. Custodio*, G.R. No. 173207, February 14, 2008, 545 SCRA 367.

[11] G.R. No. L-41715, June 18, 1976.

is a corollary obligation of petitioner to return the money paid by respondents, and since the action involves property rights,[12] it survives.

It bears noting that trial on the merits was already concluded *before* petitioner died. Since the trial court was not informed of petitioner's death, it may not be faulted for proceeding to render judgment without ordering his substitution. Its judgment is thus valid and binding upon petitioner's legal representatives or successors-in-interest, insofar as his interest in the property subject of the action is concerned.[13]

In another vein, the death of a client immediately divests the counsel of authority.[14] Thus, in filing a Notice of Appeal, petitioner's counsel of record had no personality to act on behalf of the already deceased client who, it bears reiteration, had not been substituted as a party after his death. The trial court's decision had thereby become final and executory, no appeal having been perfected.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Carpio,[*] *Brion, Bersamin,* and *Sereno, JJ.,* concur.

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[12] *Sumaljag v. Spouses Literato, et al.*, G.R. No. 149787, June 18, 2008.

[13] *Saligumba et al., v. Palanog*, G.R. No. 143365, December 4, 2008.

[14] *Active Realty and Development Corporation v. Fernandez*, G.R. No. 157186, October 19, 2007.

[*] Designated member per Raffle dated March 10, 2010.

EN BANC

[G.R. No. 164195. April 5, 2011]

APO FRUITS CORPORATION and HIJO PLANTATION, INC., *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SUPREME COURT; RULES GOVERNING SECOND MOTION FOR RECONSIDERATION; DISCUSSED.— The basic rule governing 2nd motions for reconsideration is Section 2, Rule 52 (which applies to original actions in the Supreme Court pursuant to Section 2, Rule 56) of the Rules of Court. This Rule expressly provides: Sec. 2. Second Motion for Reconsideration. No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. The absolute terms of this Rule is tempered by Section 3, Rule 15 of the Internal Rules of the Supreme Court that provides: *Sec. 3. Second Motion for Reconsideration.* – The Court **shall not entertain a second motion for reconsideration** and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* **upon *a vote of at least two-thirds of its actual membership***. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. **A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.** Separately from these rules is Article VIII, Section 4 (2) of the 1987 Constitution which governs the decision-making by the Court *en banc* of any matter before it, including a motion for the reconsideration of a previous decision. x x x Thus, while the Constitution grants the Supreme Court the power to promulgate rules concerning the practice and procedure in all courts (and allows the Court to regulate the consideration of 2nd motions for reconsideration, including the vote that the Court shall require), these procedural rules must be consistent with the standards set by the Constitution

itself. Among these constitutional standards is the above quoted Section 4 which applies to "*all other cases which under the Rules of Court are required to be heard en banc*," and **does not make any distinction as to the type of cases or rulings it applies to**, *i.e.*, whether these cases are originally filed with the Supreme Court, or cases on appeal, or rulings *on the merits* of motions before the Court. Thus, rulings on the merits by the Court *en banc* on 2nd motions for reconsideration, if allowed by the Court to be entertained under its Internal Rules, must be decided with the concurrence of a majority of the Members who actually took part in the deliberations.

2. ID.; ID.; ID.; ID.; COMPLIANCE WITH THE RULES IS DEMONSTRATED THROUGH THE PARTICIPATION OF THE 12 MEMBERS OF THE COURT INSTEAD OF REGISTERING AN EXPRESS AND SEPARATE VOTING.— When the Court ruled on October 12, 2010 on the petitioners' motion for reconsideration by a vote of 12 Members (8 for the grant of the motion and 4 against), the Court ruled on the merits of the petitioners' motion. This ruling complied in all respects with the Constitution requirement for the votes that should support a ruling of the Court. Admittedly, the Court did not make any *express* prior ruling accepting or disallowing the petitioners' motion as required by Section 3, Rule 15 of the Internal Rules. The Court, however, did not thereby contravene its own rule on 2nd motions for reconsideration; *since 12 Members of the Court opted to entertain the motion by voting for and against it, the Court simply did not register an express vote, but instead demonstrated its compliance with the rule through the participation by no less than 12 of its 15 Members.* Viewed in this light, the Court cannot even be claimed to have suspended the effectiveness of its rule on 2nd motions for reconsideration; it simply complied with this rule *in a form other than by express and separate voting.*

3. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; RIGHT THERETO IS A MATTER OF PUBLIC INTEREST.— The present case goes beyond the private interests involved; it involves a matter of public interest – the proper application of a basic

constitutionally-guaranteed right, namely, the right of a landowner to receive just compensation when the government exercises the power of eminent domain in its agrarian reform program. Section 9, Article III of the 1987 Constitution expresses the constitutional rule on eminent domain – "*Private property shall not be taken for public use without just compensation*." While confirming the State's inherent power and right to take private property for public use, this provision at the same time lays down the limitation in the exercise of this power. When it takes property pursuant to its inherent right and power, the State has the corresponding obligation to pay the owner just compensation for the property taken. For compensation to be considered "just," it must not only be the full and fair equivalent of the property taken; it must also be paid to the landowner without delay. x x x This case involves the government's agrarian reform program whose success largely depends on the willingness of the participants, both the farmers-beneficiaries and the landowners, to cooperate with the government. Inevitably, if the government falters or is seen to be faltering through lack of good faith in implementing the needed reforms, including any hesitation in paying the landowners just compensation, this reform program and its objectives would suffer major setbacks. That the government's agrarian reform program and its success are matters of public interest, to our mind, cannot be disputed as the program seeks to remedy long existing and widespread social justice and economic problems.

4. ID.; ID.; ID.; ID.; RTC'S DETERMINATION OF JUST COMPENSATION IS UPHELD BY THE COURT AS IT IS FULLY IN ACCORD WITH SECTION 17 OF R.A. 6657.— [T]his Court has already determined, *in a final and executed judgment*, that the RTC's valuation of the petitioners' properties is the correct one. To recall, the LBP initially fixed the value of Apo Fruits Corporation's (*AFC*) properties at ₱165,484.47 per hectare ***or ₱16.00 per square meter (sqm)***, while it valued Hijo Plantation Inc.'s (*HPI*) properties at ₱201,929.97 per hectare, or approximately ***₱20.00/sqm.*** In contrast, the Regional Trial Court fixed the valuation of the petitioners' properties at ***₱103.33/sqm., or more than five times the initial valuation fixed by the LBP.*** After reviewing the records, this Court affirmed the RTC's valuation in its February 6, 2007 decision,

noting that it was based on the following evidence: (a) the Commissioners' reports, (b) the Cuervo appraisers' report, (c) the schedule of market values of the City of Tagum per its 1993 and 1994 Revision of Assessment and Property Classification, (d) the value of the permanent improvements found on the expropriated properties, and (e) the comparative sales of adjacent lands from early 1995 to early 1997. The Court observed that the RTC valuation also took into consideration the land's nature as irrigated land, its location along the highway, market value, assessor's value, and the volume and value of its produce. This valuation is fully in accordance with Section 17 of RA 6657.

5. ID.; ID.; ID.; ID.; COMPENSATION, TO BE JUST MUST BE MADE IN FULL WITHOUT DELAY; 12% INTEREST AWARDED IN VIEW OF DELAYED PAYMENT.— Apart from the requirement that compensation for expropriated land must be fair and reasonable, **compensation, to be "just," must also be made without delay.** In simpler terms, for the government's payment to be considered just compensation, the landowner must receive it **in full without delay**. In the present case, **it is undisputed that the government took the petitioners' lands on December 9, 1996; the petitioners only received full payment of the just compensation due on May 9, 2008.** This circumstance, by itself, already confirms the unconscionable delay in the payment of just compensation. x x x **Thus, for twelve long years, the amount of ₱971,409,831.68 was withheld from the landowners.** An added dimension to this delayed payment is the impact of the delay. One impact – as pointed out above – is **the loss of income the landowners suffered**. Another impact that the LBP now glosses over is **the income that the LBP earned from the sizeable sum it withheld** for twelve long years. From this perspective, the unaccounted-for LBP income is **unjust enrichment** in its favor and an inequitable loss to the landowners. This situation was what the Court essentially addressed when it awarded the petitioners 12% interest.

6. ID.; ID.; ID.; ID.; TWO FACTORS THAT JUSTIFY THE ATTRIBUTION OF THE DELAY IN THE PAYMENT OF JUST COMPENSATION TO THE GOVERNMENT.— Two significant factors justify the attribution of the delay to the

government. The *first* is the DAR's gross undervaluation of the petitioners' properties – the government move that started the cycle of court actions. The *second* factor to consider is government inaction. Records show that after the petitioners received the LBP's initial valuation of their lands, they filed petitions with the DARAB, the responsible agency of the DAR, for the proper determination of just compensation. Instead of dismissing these petitions outright for lack of jurisdiction, the DARAB sat on these cases for three years. It was only after the petitioners resorted to judicial intervention, filing their petitions for the determination of just compensation with the RTC, that the petitioners' case advanced. The RTC interpreted the DARAB's inaction as reluctance of the government to pay the petitioners just compensation, a view this Court affirmed in its October 12, 2010 Resolution.

7. ID.; ID.; ID.; ID.; THE CONSTITUTION REQUIRES PAYMENT OF JUST COMPENSATION; PRINCIPLE APPLIES EVEN IF THE LANDOWNERS ARE CORPORATIONS.— Section 4, Article XIII of the 1987 Constitution x x x expressly provides that the taking of land for use in the government's agrarian reform program is **conditioned on the payment of just compensation**. Nothing in the wording of this provision even remotely suggests that the just compensation required from the taking of land for the agrarian reform program should be treated any differently from the just compensation required in any other case of expropriation. As explained by Commissioner Roberto R. Concepcion during the deliberations of the 1986 Constitutional Commission: [T]he term "just compensation" is used in several parts of the Constitution, and, therefore, it must have a uniform meaning. It cannot have in one part a meaning different from that which appears in the other portion. If, after all, the party whose property is taken will receive the real value of the property on just compensation, that is good enough. In fact, while a proposal was made during the deliberations of the 1986 Constitutional Commission to give a lower market price per square meter for larger tracts of land, the Commission never intended to give agricultural landowners less than just compensation in the expropriation of property for agrarian reform purposes. To our mind, nothing is inherently contradictory in the public purpose of land reform and the right of landowners to receive just compensation for

the expropriation by the State of their properties. That the petitioners are corporations that used to own large tracts of land should not be taken against them.

8. ID.; ID.; ID.; ID.; THE GOVERNMENT IS LIABLE TO PAY INTEREST TO THE LANDOWNERS FOR ITS DELAY IN PAYING JUST COMPENSATION NOT THE FARMERS-BENEFICIARIES.— Nor do we find any merit in the LBP's assertion that the large amount of just compensation that we awarded the petitioners, together with the amount of interest due, would necessarily result in making the farmers- beneficiaries endure another form of bondage – the payment of an exorbitant amount for the rest of their lives. As the petitioners correctly pointed out, the government's liability for the payment of interest to the landowner for any delay attributable to it in paying just compensation for the expropriated property is entirely separate and distinct from the farmers-beneficiaries' obligations to pay regular amortizations for the properties transferred to them. Republic Act No. 6657 (The Comprehensive Agrarian Reform Law, or CARL) provides for the specific source of funding to be used by the government in implementing the agrarian reform program; this funding does not come directly from the payments made by the farmers-beneficiaries. More to the point, under the CARL, the amount the farmers-beneficiaries must pay the LBP for their land is, for the most part, subsidized by the State and is not equivalent to the actual cost of the land that the Department of Agrarian Reform paid to the original landowners.

SERENO*, J., concurring opinion*:

1. REMEDIAL LAW; COURTS; SUPREME COURT; RULES GOVERNING SECOND MOTION FOR RECONSIDERATION; THE PARTICIPATION OF THE MAJORITY OF THE MEMBERS OF THE COURT IN THE DELIBERATION SATISFIES THE CONSTITUTIONAL REQUIREMENT TO SUPPORT A RULING AND OVERRIDES ANY CONCERN ABOUT THE LACK OF THE SUPER-MAJORITY VOTE REQUIRED BY THE COURT'S INTERNAL RULES.— I agree with the wise formulation of Justice Arturo D. Brion that the requirement of the 1987 Constitution, specifically in Article VIII, Section 4 (2) has been met by the fact that a majority of the Court took part in the deliberation on 12 October 2010; and therefore, that the

voting that took place thereon was valid, and more important, that the satisfaction of this constitutional requirement overrides any concern about the lack of a conscious, express super-majority vote by the Court to entertain a second motion for reconsideration.

2. ID.; ID.; ID.; ID.; SELECTIVE INVOCATION OF THE INTERNAL RULES ON THE VOTING REQUIREMENT TO RESOLVE SECOND MOTIONS FOR RECONSIDERATION IS UNHEALTHY AND WILL UNDERMINE THE MORAL AND LEGAL FORCE OF THE COURT'S DECISION.— What is unhealthy from what I see is that the objection rising from a lack of a super-majority vote is raised in one case, but not raised in others by the same objecting member — Justice Roberto A. Abad. If Section 3, Rule 15 of the Internal Rules was such an important bar that must be met in any motion for reconsideration, then it should have been raised by him as well in the still unpromulgated ruling in the *Dinagat* case. The Court has realized the difficulty that the said rule introduces. It should not be further invoked by any of its Members in a way that introduces further instability and fuels the public perception of a flip-flopping Court. With more reason, the rule should not have been invoked only in this case, but not in the two other highly controversial flip-flopping cases, by any of the Court's Members who strongly moved for the reconsideration of the original decision in *League of Cities* and for the recall of the entry of final judgment in *Dinagat*. Technically, Section 3, Rule 15 of the Internal Rules of Court, does not apply to the reconsideration of the original Decision in *League of Cities*. Had there been a consistent intent to protect the immutability of Supreme Court decisions, however, a similar rule in the 1997 Rules of Civil Procedure could have been invoked, namely, Section 2, Rule 56, in relation to Section 2, Rule 52, prohibiting the filing of second motions for reconsideration. x x x What has been at stake in the flip-flopping cases and now in the puzzling invocation of the Internal Rules of the Court in this case is no less than the risk that the moral force of Supreme Court judgments will be undermined. The Supreme Court's word is final because all the coercive forces of the state apparatus will ensure its execution, by operation of the Constitution. The Members of the Court must never lose sight of the fact that it owes the authority of its

decisions only to the Constitution and, hence, to the people themselves. When the moral force of the decisions of the Supreme Court is lost because the people do not see in them the application of procedural rules in an even manner, then it is conceivable that even the automatic legal force given to its decisions may likewise be lost. That would be a most sad period in its history.

3. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; 6% RATE OF INTEREST, AND NOT 12%, IS PROPER FOR THE DELAYED PAYMENT OF JUST COMPENSATION.— On the substantial ruling in this case, while I have full sympathy for the financial condition of the public respondent and the National Government, Justice Brion's assessment of the respective legal rights and obligations of the parties is correct. In an interim voting that took place in this case, I had wanted, and indeed voted for, the imposition of a mere 6% interest and not a 12% interest on the principal amount due petitioners. Thus, I do not fully agree with the rate of interest imposed by the Decision. It is also correct, however, that a strong signal must be sent that the Government cannot willfully refuse to promptly pay a just obligation. The problem that remains unaddressed, though, is who should bear responsibility for the unjust delay in payment that happened here. The *ponencia* has already named the various government actors whose prompt resolution of petitioners' claim was required, and who failed to discharge such duty. Unless these actors are made operationally liable for the unjust delay, it will be the taxpayer who will ultimately bear the adverse financial consequences of our findings and directive in this case, as usually happens in most public accountability cases. Our public officers responsible for guarding the coffers of our government from irresponsible acts of its officers must do more than just accept the immediate effects of the *fallo* of the Decision in this case.

ABAD, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; DELAY IN THE PAYMENT THEREOF COULD NOT BE ATTRIBUTED TO THE LAND BANK OF THE PHILIPPINES.— The *ponencia* blames Land Bank for the twelve-year delay in the payment of

compensation to AFC-HPI, claiming that had the government not grossly undervalued the expropriated properties and thus betrayed lack of good faith, it could have prevented the lengthy legal proceedings in the case. But the fact that Land Bank did not readily agree with AFC-HPI regarding the value of the lands should not mean that Land Bank acted in bad faith or deliberately delayed payment of compensation. The records show that Land Bank valued the lands, using the compensation formula that Section 17 of Republic Act 6657 and the DAR's implementing rules provide. Can that be malicious or in bad faith? Granted that Land Bank appealed the RTC decision, which awarded a compensation of ₱1,383,179,000.00 to AFC-HPI (more than double what the CARL formula provided) plus 12% interest per annum until the finality of its decision, such appeal can hardly be regarded as dilatory and baseless. Indeed, although the Court affirmed the principal amount that the RTC fixed, it ordered deleted the grossly excessive interest of 12% counted from the date of taking or a period of about 12 years. Even if the Court changed its mind on a third motion for reconsideration and after the finality of its judgment, it cannot be said, therefore, that Land Bank's appeal was malicious or in bad faith. x x x Here, there is no evidence to prove that Land Bank was in delay. On the contrary, pertinent amounts were deposited, specifically ₱26,409,549.86 for AFC and ₱45,481,706.76 for HPI, within fourteen months after AFC-HPI filed the complaint for just compensation before the RTC. Notably, Land Bank made the deposits prior to AFC-HPI's titles being cancelled. The bank afterwards made additional payments based on upgraded values, swelling its total payments to ₱411,769,168.32 even before the RTC case was filed. The *ponencia* points out that Land Bank paid only a trifling of the actual value of properties as later determined by the Court. But I do not think that ₱411,769,168.32, a third of the RTC award and paid even before the suit was filed, can be regarded as trifling. AFC-HPI did not linger long to withdraw the deposits, negating any notion that it suffered long with nothing to assuage its feelings about the compensation. Likewise, Land Bank could not have foreseen that it would take twelve years for the case to be resolved. AFC-HPI themselves erroneously filed their complaints with the DARAB instead of directly seeking recourse with the courts. The *ponencia* is requiring Land Bank to pay for that error and the delays rooted in it. To iterate, Land Bank

had every right to defend an initial position dictated by law and not risk sending bank officers to jail for giving undue benefit to others in violation of the Anti-graft and Corrupt Practices Act. Land Bank should not be penalized for taking such cautious position with respect to money belonging to the government. The Court should not, by its present ruling, encourage government agencies to pay more than what the law or the rules prescribe unless directed differently by superior orders.

2. REMEDIAL LAW; COURTS; SUPREME COURT; RULES GOVERNING SECOND MOTION FOR RECONSIDERATION; TAKING OF *"A VOTE"* IS REQUIRED; MERE ASSUMPTION OF CONCURRENCE IS NOT EQUIVALENT TO TAKING OF A VOTE.— [E]ven if AFC-HPI's motion can be treated as another **second motion for reconsideration**, which it is not, the Court *En Banc* violated Section 3, Rule 15, of its Internal Rules which provides that it cannot entertain a second motion for reconsideration except upon a vote of two-thirds of its actual membership in the highest interest of justice. x x x Justice Brion of course points out that since twelve Justices took part in acting on AFC-HPI's motion for reconsideration, it may be assumed that such number agreed to entertain the same. But this assumption will not do since the rules require the taking of "**a vote**" on whether to entertain such a motion or not. An assumption of concurrence is not the equivalent of the taking of a vote. Moreover, in truth, those who voted to approve the October 12, 2010 resolution simply forgot to vote before hand on whether or not to entertain AFC-HPI's motion for reconsideration.

3. ID.; ID.; ID.; ID.; OMISSION TO TAKE THE REQUIRED TWO-THIRDS VOTE OF THE *EN BANC*'S ACTUAL MEMBERSHIP IS FATAL.— [I]t is inevitable that the procedure for entertaining second motions for reconsideration should follow the two-step procedure observed when a Division wants to refer a case to the *En Banc* for its consideration. This requires the *En Banc* to first accept the referral before acting to decide the referred case. This was not done in the present case. The Minutes do not show that the *En Banc* voted by at least two-thirds of its actual membership to entertain the motion for reconsideration before approving the draft

resolution for release. The omission is fatal to the resolution because the requirement of a two-thirds vote of the *En Banc*'s actual membership is a specially difficult bar that the Justices precisely adopted unanimously to solve the problem of endless motions for reconsideration that undermine the stability of the judgments of courts. If the *En Banc* ignores this rule to accommodate an award of ₱1.331 billion in interest to AFC-HPI, the public who will pay for it would probably not be able to understand the *En Banc*'s reason for making such an exception.

APPEARANCES OF COUNSEL

Herrera Teehankee Faylona Cabrera and *Sanidad & Villanueva Law Offices* for petitioners.

LBP Legal Services Group for respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve Land Bank of the Philippines' (*LBP's*) **2nd Motion for Reconsideration** of December 14, 2010 that addresses our Resolutions of October 12, 2010 and November 23, 2010. This motion prays as well for the holding of oral arguments. We likewise resolve the Office of the Solicitor General's (*OSG*) Motion for Leave to Intervene and to Admit Motion for Reconsideration-in-Intervention dated February 15, 2011 in behalf of the Republic of the Philippines (*Republic*).

The Motion for Reconsideration

The LBP submits the following arguments in support of its 2nd motion for reconsideration:

a) the test of "transcendental importance" does not apply to the present case;

b) the standard of "transcendental importance" cannot justify the negation of the doctrine of immutability of a final judgment and the abrogation of a vested right in favor of the Government that respondent LBP represents;

c) the Honorable Court ignored the deliberations of the 1986 Constitutional Commission showing that just compensation for expropriated agricultural property must be viewed in the context of social justice; and

d) granting *arguendo* that the interest payment has factual and legal bases, only six (6%) percent interest per annum may be validly imposed.

We have more than amply addressed argument (d) above in our October 12, 2010 Resolution, and we see no point in further discussing it. Without in any way detracting from the overriding effect of our main and primary ruling that the present 2nd motion for reconsideration is a prohibited motion that the Court can no longer entertain, and if only to emphatically signal an unequivocal *finis* to this case, we examine for the last and final time the LBP's other arguments.

In the course of the Court's deliberations, Mr. Justice Roberto A. Abad questioned the application of Section 3, Rule 15 of the Internal Rules of the Supreme Court to the present 2nd motion for reconsideration. He posited that instead of voting immediately on the present 2nd motion for reconsideration, the Court should instead first consider the validity of our October 12, 2010 Resolution; he claimed that this Resolution is null and void because the Court violated the above-cited provision of the Internal Rules when it did not first vote on whether the Resolution's underlying motion (itself a 3rd motion for reconsideration) should be entertained before voting on the motion's merits. We shall lay to rest Mr. Justice Abad's observation before dwelling on the merits of the present 2nd motion for reconsideration.

Our Ruling

We find no merit in the LBP's second motion for reconsideration, and reject as well the Mr. Justice Abad's observation on how to approach the consideration of the present motion.

Mr. Justice Abad's Observations/Objections; The Rules on 2nd Motions for Reconsideration.

Mr. Justice Abad's observation apparently stemmed from the peculiar history of the present case.

a. A recap of the history of the case.

This case was originally handled by the Third Division of this Court. In its original Decision of February 6, 2007, the Division affirmed the RTC's decision setting the just compensation to be paid and fixing the interest due on the balance of the compensation due at 12% per annum. In its Resolution of December 19, 2007, the Third Division resolved the parties' motions for reconsideration by deleting the 12% interest due on the balance of the awarded just compensation. The parties' subsequent motions to reconsider this Resolution were denied on April 30, 2008; on May 16, 2008, entry of judgment followed. Despite the entry of judgment, the present petitioners filed a second motion for reconsideration that prayed as well that the case be referred to the Court *en banc*. Finding merit in these motions, the Third Division referred the case to the *En Banc* for its disposition. On December 4, 2009, the Court *en banc* denied the petitioners' second motion for reconsideration. Maintaining their belief in their demand to be granted 12% interest, the petitioners persisted in filing another motion for reconsideration. In the interim, the Court promulgated its Internal Rules that regulated, among others, 2nd motions for reconsideration. On October 12, 2010, the Court *en banc* granted – by a vote of 8 for and 4 against – the petitioner's motion and awarded the 12% interests the petitioners' prayed for, thus affirming the interests the RTC originally awarded. The Court subsequently denied the respondent's motion for reconsideration, giving rise to the present 2nd motion for reconsideration. It was at this point that the OSG moved for leave to intervene.

b. The governing rules on 2nd motions for reconsideration

The basic rule governing 2nd motions for reconsideration is Section 2, Rule 52 (which applies to original actions in the

Supreme Court pursuant to Section 2, Rule 56) of the Rules of Court. This Rule expressly provides:

> Sec. 2. Second Motion for Reconsideration. No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

The absolute terms of this Rule is tempered by Section 3, Rule 15 of the Internal Rules of the Supreme Court that provides:

> *Sec. 3. Second Motion for Reconsideration.* – The Court **shall not entertain a second motion for reconsideration** and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* **upon *a vote of at least two-thirds of its actual membership***. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. **A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.** [Emphases supplied.]

Separately from these rules is Article VIII, Section 4 (2) of the 1987 Constitution which governs the decision-making by the Court *en banc* of any matter before it, including a motion for the reconsideration of a previous decision. This provision states:

> Section 4.
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> (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and **all other cases which under the Rules of Court are required to be heard *en banc***, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, **shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations** on the issues in the case and voted thereon.

Thus, while the Constitution grants the Supreme Court the power to promulgate rules concerning the practice and procedure in all courts[1] (and allows the Court to regulate the consideration of 2nd motions for reconsideration, including the vote that the Court shall require), these procedural rules must be consistent with the standards set by the Constitution itself. Among these constitutional standards is the above quoted Section 4 which applies to "*all other cases which under the Rules of Court are required to be heard en banc*," and **does not make any distinction as to the type of cases or rulings it applies to**, *i.e.*, whether these cases are originally filed with the Supreme Court, or cases on appeal, or rulings *on the merits* of motions before the Court. Thus, rulings on the merits by the Court *en banc* on 2nd motions for reconsideration, if allowed by the Court to be entertained under its Internal Rules, must be decided with the concurrence of a majority of the Members who actually took part in the deliberations.

When the Court ruled on October 12, 2010 on the petitioners' motion for reconsideration by a vote of 12 Members (8 for the grant of the motion and 4 against), the Court ruled on the merits of the petitioners' motion. This ruling complied in all respects with the Constitution requirement for the votes that should support a ruling of the Court.

Admittedly, the Court did not make any *express* prior ruling accepting or disallowing the petitioners' motion as required by Section 3, Rule 15 of the Internal Rules. The Court, however, did not thereby contravene its own rule on 2nd motions for reconsideration; *since 12 Members of the Court opted to entertain*

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[1] Section 5.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

the motion by voting for and against it, the Court simply did not register an express vote, but instead demonstrated its compliance with the rule through the participation by no less than 12 of its 15 Members. Viewed in this light, the Court cannot even be claimed to have suspended the effectiveness of its rule on 2nd motions for reconsideration; it simply complied with this rule *in a form other than by express and separate voting*.

Based on these considerations, arrived at after a lengthy deliberation, the Court thus rejected Mr. Justice Abad's observations, and proceeded to vote on the question of whether to entertain the respondents' present 2nd motion for reconsideration. ***The vote was 9 to 2, with 9 Members voting not to entertain the LBP's 2nd motion for reconsideration.*** By this vote, the ruling sought to be reconsidered for the second time was unequivocally upheld; its finality – already declared by the Court in its Resolution of November 23, 2010 – was reiterated. To quote the dispositive portion of the reiterated November 23, 2010 Resolution:

> On these considerations, we hereby DENY the Motion for Reconsideration with FINALITY. No further pleadings shall be entertained. Let entry of judgment be made in due course.

Thus, this Court mandated a clear, unequivocal, final and emphatic *finis* to the present case.

Landowner's right to just compensation: a matter of public interest

In assailing our October 12, 2010 resolution, the LBP emphasizes the need to respect the doctrine of immutability of final judgments. The LBP maintains that we should not have granted the petitioners' motion for reconsideration in our October 12, 2010 Resolution because the ruling deleting the 12% interest had already attained finality when an Entry of Judgment was issued. The LBP argues, too, that the present case does not involve a matter of transcendental importance, as it does not involve life or liberty. The LBP further contends that the Court mistakenly used the concept of transcendental

importance to recall a final ruling; this standard should only apply to questions on the legal standing of parties.

In his dissenting opinion, Mr. Justice Roberto Abad agrees with the LBP's assertion, positing that this case does not fall under any of the exceptions to the immutability doctrine since it only involves money and does not involve a matter of overriding public interest.

We reject the basic premise of the LBP's and Mr. Justice Abad's arguments for being flawed. The present case goes beyond the private interests involved; it involves a matter of public interest – the proper application of a basic constitutionally-guaranteed right, namely, the right of a landowner to receive just compensation when the government exercises the power of eminent domain in its agrarian reform program.

Section 9, Article III of the 1987 Constitution expresses the constitutional rule on eminent domain – "*Private property shall not be taken for public use without just compensation.*" While confirming the State's inherent power and right to take private property for public use, this provision at the same time lays down the limitation in the exercise of this power. When it takes property pursuant to its inherent right and power, the State has the corresponding obligation to pay the owner just compensation for the property taken. For compensation to be considered "just," it must not only be the full and fair equivalent of the property taken;[2] it must also be paid to the landowner without delay.[3]

To fully and properly appreciate the significance of this case, we have to consider it in its proper context. Contrary to the LBP's and Mr. Justice Abad's assertions, the outcome of this case is not confined to the fate of the two petitioners alone. This case involves the government's agrarian reform program whose success largely depends on the willingness of the participants, both the farmers-beneficiaries and the

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[2] *Land Bank of the Philippines v. Orilla*, G.R. No. 157206, June 27, 2008, 556 SCRA 102, 116-117.

[3] *Land Bank v. Rodriguez*, G.R. No. 148892, May 6, 2010.

landowners, to cooperate with the government. Inevitably, if the government falters or is seen to be faltering through lack of good faith in implementing the needed reforms, including any hesitation in paying the landowners just compensation, this reform program and its objectives would suffer major setbacks. That the government's agrarian reform program and its success are matters of public interest, to our mind, cannot be disputed as the program seeks to remedy long existing and widespread social justice and economic problems.

In a last ditch attempt to muddle the issues, the LBP focuses on our use of the phrase "transcendental importance," and asserts that we erred in applying this doctrine, applicable only to legal standing questions, to negate the doctrine of immutability of judgment. This is a very myopic reading of our ruling as the context clearly shows that the phrase "transcendental importance" was used only to emphasize the **overriding public interest** involved in this case. Thus, we said:

> That the issues posed by this case are of transcendental importance is not hard to discern from these discussions. A constitutional limitation, guaranteed under no less than the all-important Bill of Rights, is at stake in this case: how can compensation in an eminent domain case be "just" when the payment for the compensation for property already taken has been unreasonably delayed? To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries the burden of showing that these standards have been met. Thus, to simply dismiss the case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected.
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> More than the stability of our jurisprudence, the matter before us is of transcendental importance to the nation because of the subject matter involved – agrarian reform, a societal objective of that the government has unceasingly sought to achieve in the past half century.[4]

[4] In our resolution dated October 12, 2010.

From this perspective, our Resolution of October 12, 2010 only had to demonstrate, as it did, that the higher interests of justice are duly served. All these, amply discussed in the Resolution of October 12, 2010, are briefly summarized and reiterated below.

LBP at fault for twelve-year delay in payment

In his dissenting opinion, Mr. Justice Abad insists that the LBP's initial valuation of the petitioners' properties was fully in accord with Section 17 of the CARL. He posits that when the RTC gave a significantly higher value to these lands, the LBP acted well within its rights when it appealed the valuation. Thus, to him, it was wrong for this Court to characterize the LBP's appeal as malicious or in bad faith.

A simple look at the attendant facts disproves the accuracy of this claim.

First, Mr. Justice Abad's allegation that the LBP correctly valued the petitioners' properties is not at all accurate. Significantly, **Mr. Justice Abad does not cite any evidence on record to support his claim** that "the Land Bank valued the lands using the compensation formula that Section 17 of Republic Act 6657 and the DAR's implementing rules provide."[5]

More to the point, this Court has already determined, *in a final and executed judgment*, that the RTC's valuation of the petitioners' properties is the correct one. To recall, the LBP initially fixed the value of Apo Fruits Corporation's (*AFC*) properties at ₱165,484.47 per hectare ***or ₱16.00 per square meter (sqm)***, while it valued Hijo Plantation Inc.'s (*HPI*) properties at ₱201,929.97 per hectare, or approximately ***₱20.00/sqm.*** In contrast, the Regional Trial Court fixed the valuation of the petitioners' properties at ***₱103.33/sqm., or more than five times the initial valuation fixed by the LBP.***

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[5] Justice Abad's Dissent, p. 2.

After reviewing the records, this Court affirmed the RTC's valuation in its February 6, 2007 decision, noting that it was based on the following evidence: (a) the Commissioners' reports, (b) the Cuervo appraisers' report, (c) the schedule of market values of the City of Tagum per its 1993 and 1994 Revision of Assessment and Property Classification, (d) the value of the permanent improvements found on the expropriated properties, and (e) the comparative sales of adjacent lands from early 1995 to early 1997. The Court observed that the RTC valuation also took into consideration the land's nature as irrigated land, its location along the highway, market value, assessor's value, and the volume and value of its produce. This valuation is fully in accordance with Section 17 of RA 6657, which states:

> Section 17. *Determination of Just Compensation*. - In determining just compensation, **the cost of acquisition of the land, the current value of like properties**, **its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors**, shall be considered. The social and economic benefits contributed by the farmers and the farm workers and by government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

On its face, the staggering difference between the **LBP's initial valuation** of the petitioners' properties (totaling ₱251,379,104.02) and the RTC's valuation (totaling ₱1,383,179,000.00) – **a difference of ₱1,131,799,895.98 amounting to 81% of the total price** – betrays the lack of good faith on the part of the government in dealing with the landowners. The sheer enormity of the difference between the two amounts cannot but lead us to conclude that the LBP's error was grievous and amounted to nothing less than ***gross negligence in the exercise of its duty*** – in this case, to properly ascertain the just compensation due to the petitioners.

Mr. Justice Abad further argues that interest on just compensation is due only where there is delay in payment. In the present case, the petitioners allegedly did not suffer any

delay in payment since the LBP made partial payments prior to the taking of their lands.

This argument completely overlooks the definition of just compensation already established in jurisprudence. Apart from the requirement that compensation for expropriated land must be fair and reasonable, **compensation, to be "just," must also be made without delay.**[6] In simpler terms, for the government's payment to be considered just compensation, the landowner must receive it **in full without delay**.

In the present case, **it is undisputed that the government took the petitioners' lands on December 9, 1996; the petitioners only received full payment of the just compensation due on May 9, 2008.** This circumstance, by itself, already confirms the unconscionable delay in the payment of just compensation.

Admittedly, a grain of truth exists in Justice Abad's observation that the petitioners received partial payments from the LBP before the titles to their landholdings were transferred to the government. **The full and exact truth**, however, is that the partial payments at the time of the taking only amounted to a trifling **five percent (5%) of the actual value** of the expropriated properties, as determined with finality by this Court. Even taking into consideration the subsequent partial payments made totaling ₱411,769,168.32 (inclusive of the amounts deposited prior to the taking), these payments only constituted **a mere one-third (1/3) of the actual value of the petitioners' properties**.

It should be considered – as highlighted in our October 12, 2010 Resolution – that the properties the government took were fully operating and earning plantations at the time of the taking. Thus, the landowners lost not only their properties, but the fruits of these properties. These were all lost in 1996, leaving the landowners without any replacement income from their properties, except for the possible interest for the trifling

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[6] *Land Bank v. Rodriguez*, G.R. No. 148892, May 6, 2010.

payment made at the time of the taking that, together with the subsequent payment, only amounted to a third of the total amount due. **Thus, for twelve long years, the amount of ₱971,409,831.68 was withheld from the landowners.**

An added dimension to this delayed payment is the impact of the delay. One impact – as pointed out above – is **the loss of income the landowners suffered**. Another impact that the LBP now glosses over is **the income that the LBP earned from the sizeable sum it withheld** for twelve long years. From this perspective, the unaccounted-for LBP income is **unjust enrichment** in its favor and an inequitable loss to the landowners. This situation was what the Court essentially addressed when it awarded the petitioners 12% interest.

Mr. Justice Abad goes on to argue that the delay should not be attributed to the LBP as it could not have foreseen that it would take twelve years for the case to be resolved. Justice Abad's stance could have been correct were it not for the fact that the delay in this case is ultimately attributable to the government. Two significant factors justify the attribution of the delay to the government.

The *first* is the DAR's gross undervaluation of the petitioners' properties – the government move that started the cycle of court actions.

The *second* factor to consider is government inaction. Records show that after the petitioners received the LBP's initial valuation of their lands, they filed petitions with the DARAB, the responsible agency of the DAR, for the proper determination of just compensation. Instead of dismissing these petitions outright for lack of jurisdiction, the DARAB sat on these cases for three years. It was only after the petitioners resorted to judicial intervention, filing their petitions for the determination of just compensation with the RTC, that the petitioners' case advanced.

The RTC interpreted the DARAB's inaction as reluctance of the government to pay the petitioners just compensation, a view this Court affirmed in its October 12, 2010 Resolution.

Expropriation for agrarian reform requires the payment of just compensation

The LBP claims that the just compensation in this case should be determined within the context of the article on social justice found in the 1987 Constitution. In the LBP's opinion, when we awarded the petitioners 12% interest by way of potential income, we removed from the taking of agricultural properties for agrarian reform its main public purpose of righting the wrong inflicted on landless farmers.

By this argument, the LBP effectively attempts to make a distinction between the just compensation given to landowners whose properties are taken for the government's agrarian reform program and properties taken for other public purposes. This perceived distinction, however, is misplaced and is more apparent than real.

The constitutional basis for our agrarian reform program is Section 4, Article XIII of the 1987 Constitution, which mandates:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation**.

This provision expressly provides that the taking of land for use in the government's agrarian reform program is **conditioned on the payment of just compensation**. Nothing in the wording of this provision even remotely suggests that the just compensation required from the taking of land for the agrarian reform program should be treated any differently from the just compensation required in any other case of expropriation. As explained by Commissioner Roberto R. Concepcion during the deliberations of the 1986 Constitutional Commission:

[T]he term "just compensation" is used in several parts of the Constitution, and, therefore, it must have a uniform meaning. It cannot have in one part a meaning different from that which appears in the other portion. If, after all, the party whose property is taken will receive the real value of the property on just compensation, that is good enough.[7]

In fact, while a proposal was made during the deliberations of the 1986 Constitutional Commission to give a lower market price per square meter for larger tracts of land, the Commission never intended to give agricultural landowners less than just compensation in the expropriation of property for agrarian reform purposes.[8]

To our mind, nothing is inherently contradictory in the public purpose of land reform and the right of landowners to receive just compensation for the expropriation by the State of their properties. That the petitioners are corporations that used to own large tracts of land should not be taken against them. As Mr. Justice Isagani Cruz eloquently put it:

[S]ocial justice - or any justice for that matter - is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly

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[7] III Record at 17, cited in Bernas, SJ. The Intent of the 1986 Constitution Writers, 1995 ed., p. 948.

[8] *Id*. at 947; III Record at 17, where the Commissioners, in discussing just compensation within the context of properties expropriated for redistribution to farmers in pursuance of agrarian reform, stated thus:

Fr. Bernas: We discussed earlier the idea of a progressive system of compensation and I must admit, that it was before I discussed it with Commissioner Monsod. I think what is confusing the matter is the fact that when we speak of progressive taxation, we mean the bigger the tax base, the higher the rate of tax. Here, what we are saying is that the bigger the land is, the lower the value per square meter. So, it is really regressive, not progressive.

Mr. Monsod: Yes, Madam President, it is true. It is progressive with respect to the beneficiary and regressive with respect to the landowner.

Fr. Bernas: But is it the intention of the Committee that the owner should receive less than the market value?

Mr. Monsod: **It is not the intention of the Committee that the owner should receive less than the just compensation.**

extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.[9]

Interest payments borne by government, not by farmers-beneficiaries

Nor do we find any merit in the LBP's assertion that the large amount of just compensation that we awarded the petitioners, together with the amount of interest due, would necessarily result in making the farmers- beneficiaries endure another form of bondage – the payment of an exorbitant amount for the rest of their lives.

As the petitioners correctly pointed out, the government's liability for the payment of interest to the landowner for any delay attributable to it in paying just compensation for the expropriated property is entirely separate and distinct from the farmers-beneficiaries' obligations to pay regular amortizations for the properties transferred to them.

Republic Act No. 6657 (The Comprehensive Agrarian Reform Law, or CARL) provides for the specific source of funding to be used by the government in implementing the agrarian reform program; this funding does not come directly from the payments made by the farmers-beneficiaries.[10]

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[9] *Gelos v. Court of Appeals*, G.R. No. 86186, May 8, 1992, 208 SCRA 608, 616.

[10] Section 63 of Republic Act No. 6657 provides:

Section 63. *Funding Source.*- The initial amount needed to implement this Act for the period of ten (10) years upon approval hereof shall be funded from the Agrarian Reform Fund created under Sections 20 and 21 of Executive Order No. 229.Additional amounts are hereby authorized to be appropriated as and when needed to augment the Agrarian Reform Fund in order to fully implement the provisions of this Act.

Sources of funding or appropriations shall include the following:

(a) Proceeds of the sales of the Assets Privatization Trust;

(b) All receipts from assets recovered and from sale of ill-gotten wealth recovered through the Presidential Commission on Good Government;

More to the point, under the CARL, the amount the farmers-beneficiaries must pay the LBP for their land is, for the most part, subsidized by the State and is not equivalent to the actual cost of the land that the Department of Agrarian Reform paid to the original landowners. Section 26, Chapter VII of the CARL provides:

SEC. 26. *Payment by Beneficiaries.* - Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations at six percent (6%) interest per annum. The payments for the first three (3) years after the award may be at reduced amounts as established by the PARC: *Provided,* That **the first five (5) annual payments may not be more than five percent (5%) of the value of the annual gross productions paid as established by the DAR**. Should the scheduled annual payments after the fifth year exceed ten percent (10) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP may reduce the interest rate or reduce the principal obligation to make the payment affordable.

Interpreting this provision of the law, DAR Administrative Order No. 6, Series of 1993 provides:

A. As a general rule, land awarded pursuant to E.O. 229 and R.A. 6657 shall be repaid by the Agrarian Reform Beneficiary (ARB) to LANDBANK in thirty (30) annual amortizations at six (6%) percent interest per annum. The annual amortization shall start one year from date of Certificate of Landownership Award (CLOA) registration.

B. The payments by the ARBs for the first three (3) years shall be two and a half percent (2.5%) of AGP [Annual Gross Production] and five percent (5.0%) of AGP for the fourth

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(c) Proceeds of the disposition of the properties of the Government in foreign countries;

(d) Portion of amounts accruing to the Philippines from all sources or official foreign aid grants and concessional financing from all countries, to be used for the specific purposes of financing production credits, infrastructures, and other support services required by this Act;

(e) Other government funds not otherwise appropriated.

All funds appropriated to implement the provisions of this Act shall be considered continuing appropriations during the period of its implementation.

> and fifth years. To further make the payments affordable, the ARBs shall pay ten percent (10%) of AGP or the regular amortization, **whichever is lower**, from the sixth (6th) to the thirtieth (30th) year.

Clearly, **the payments made by the farmers-beneficiaries to the LBP are primarily based on a fixed percentage of their annual gross production**, or the value of the annual yield/produce of the land awarded to them.[11] The cost of the land will only be considered as the basis for the payments made by the farmers-beneficiaries when this amount is lower than the amount based on the annual gross production. Thus, there is no basis for the LBP to claim that our ruling has violated the letter and spirit of the social justice provision of the 1987 Constitution. On the contrary, our ruling is made in accordance with the intent of the 1987 Constitution.

Motion for Oral Arguments

We deny as well the LBP's motion to set the case for oral arguments. The submissions of the parties, as well as the records of the case, have already provided this Court with enough arguments and particulars to rule on the issues involved. Oral arguments at this point would be superfluous and would serve no useful purpose.

The OSG's Intervention

The interest of the Republic, for whom the OSG speaks, has been amply protected through the direct action of petitioner LBP – the government instrumentality created by law to provide timely and adequate financial support in all phases involved in the execution of needed agrarian reform. The OSG had every opportunity to intervene through the long years that this case had been pending but it chose to show its hand only at this very late stage when its presence can only serve to delay the final disposition of this

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[11] DAR Administrative Order No. 6, Series of 1993 defines Annual Gross Production (AGP) as the "peso (P) value of the annual yield/produce per hectare of the land awarded to farmer-beneficiaries (as established jointly by the Department of Agrarian Reform (DAR) and the Land Bank of the Philippines [LBP] during the valuation process) which is reflected in the valuation portion of the Claims Valuation and Processing Form.

case. The arguments the OSG presents, furthermore, are issues that this Court has considered in the course of resolving this case. Thus, every reason exists to deny the intervention prayed for.

WHEREFORE, premises considered, the respondent's second motion for reconsideration and the motion to set the case for oral arguments are hereby *DENIED WITH ABSOLUTE FINALITY*. The motion for intervention filed by the Office of the Solicitor General is, likewise, denied. We **reiterate**, under pain of contempt if our directive is disregarded or disobeyed, that *no further pleadings shall be entertained*. Let judgment be entered in due course.

SO ORDERED.

Carpio Morales, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Sereno, J., see concurring opinion.

Abad, J., see dissenting opinion.

Corona, C.J. and *Velasco, Jr., J.,* join the dissent of Justice Abad.

Leonardo-de Castro, J., maintains her vote for reduced interest rate.

Carpio, J., no part, prior inhibition.

Nachura, J., on leave.

CONCURRING OPINION

SERENO, *J.*:

I write separately to express my concern over what I perceive as an unhealthy invocation of the Internal Rules of the Supreme Court, specifically Section 3, Rule 15, on the matter of entertaining second motions for reconsideration to set aside a final judgment of this Court. Admittedly, having been appointed to the Court after the effectivity of the said rule on 22 May 2010, I do not have the advantage of knowing firsthand the history of the said rule, but I have heard enough, during the deliberations on this case, of the problem that will continue to be engendered by Section 3, Rule 15.

I understand that at the time the above rule was formulated, the Court did not expect that a conscious two-step process would be so rigidly demanded by any of its Members to the point that the rule would be used as basis to move to recall a final judgment of this Court. Neither was it fully anticipated that the refusal to do so would lead to concerns on the possible removal of Members of the Court for violation of its own rules. Thus, I agree with the wise formulation of Justice Arturo D. Brion that the requirement of the 1987 Constitution, specifically in Article VIII, Section 4 (2) has been met by the fact that a majority of the Court took part in the deliberation on 12 October 2010; and therefore, that the voting that took place thereon was valid, and more important, that the satisfaction of this constitutional requirement overrides any concern about the lack of a conscious, express super-majority vote by the Court to entertain a second motion for reconsideration.

What is unhealthy from what I see is that the objection rising from a lack of a super-majority vote is raised in one case, but not raised in others by the same objecting member — Justice Roberto A. Abad. If Section 3, Rule 15 of the Internal Rules was such an important bar that must be met in any motion for reconsideration, then it should have been raised by him as well in the still unpromulgated ruling in the *Dinagat* case.[1] The Court has realized the difficulty that the said rule introduces. It should not be further invoked by any of its Members in a way that introduces further instability and fuels the public perception of a flip-flopping Court. With more reason, the rule should not have been invoked only in this case, but not in the two other highly controversial flip-flopping cases, by any of the Court's Members who strongly moved for the reconsideration of the original decision in *League of Cities*[2] and for the recall of the entry of final judgment in *Dinagat*. Technically, Section 3, Rule 15 of the Internal Rules of Court, does not apply to the reconsideration of the original Decision in *League of Cities.* Had there been a consistent intent to protect the immutability

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[1] *Navarro v. Executive Secretary*, G.R. No 180050, 10 February 2010.

[2] G.R. Nos. 176951, 177499, 178056, 18 November 2008.

of Supreme Court decisions, however, a similar rule in the 1997 Rules of Civil Procedure could have been invoked, namely, Section 2, Rule 56, in relation to Section 2, Rule 52, prohibiting the filing of second motions for reconsideration.

While the classic lines in *Banogon v. Zerna*[3] are writ in large part to litigants to make them accept that the orderly administration of justice means that their causes must end at some time, it is most earnestly and humbly believed that those lines must be re-learned by this Court as well. This re-learning seems urgent, especially with the reversal of the original Decision in *League of Cities*, followed by the reversal of the fully executory *Dinagat* Decision.

To recall those lines:

> Litigation must end and terminate sometime and somewhere and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.
>
> There should be a greater awareness on the part of litigants that the time of the judiciary, much more so of this Court, is too valuable to be wasted or frittered away by efforts, far from commendable, to evade the operation of a decision final and executory, especially so, where, as shown in this case, the clear and manifest absence of any right calling for vindication, is quite obvious and indisputable.

That this concern about the endlessness of litigation should morph —from one regarding the behavior of litigants to one regarding the stability of the decision-making instincts of the Members of this Court — is shared by Justices Antonio T. Carpio and Arturo D. Brion as well in their Opinions in *League of Cities* and *Dinagat*. To re-cast the lines of *Banogon v. Serna*, I would venture to say this:

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[3] G.R. No. L-35469, 9 October 1987, 154 SCRA 593.

There should be a greater awareness of the members of judiciary, that its time, especially that of the Supreme Court, is too valuable to be wasted or frittered away by efforts, far from commendable, that come from any quarter including its own, to evade the operation of a decision final and executory, especially so, where, as shown in this case, the clear and manifest absence of any right calling for vindication, is quite obvious and indisputable.

What has been at stake in the flip-flopping cases and now in the puzzling invocation of the Internal Rules of the Court in this case is no less than the risk that the moral force of Supreme Court judgments will be undermined. The Supreme Court's word is final because all the coercive forces of the state apparatus will ensure its execution, by operation of the Constitution. The Members of the Court must never lose sight of the fact that it owes the authority of its decisions only to the Constitution and, hence, to the people themselves. When the moral force of the decisions of the Supreme Court is lost because the people do not see in them the application of procedural rules in an even manner, then it is conceivable that even the automatic legal force given to its decisions may likewise be lost. That would be a most sad period in its history.

While Justice Brion, in his Dissent in the latest *Dinagat* Decision, invokes the non-adherence to Sec. 3, Rule 15 of the Internal Rules of the Court as an additional reason to object to the reversal of the *Dinagat* original Decision, his sentiments must be taken in the context of the recent puzzling reversals of this Court. Thus, while I am not convinced about the necessity of the above rule, I understand and fully support the spirit in which it was made — to restore belief and actual adherence to the doctrine of immutability of judgments and its necessary by-product, the stability of judicial decisions. There need actually be no hard and fast rule on the matter if the members of this Court were to remember that there are behind every good decision, whose dispositive effect must be immutable, lie fundamental rules of sound legal reasoning. When these are absent, as in the reversals of the original decision in *League of Cities* and *Dinagat*, for reasons that are hollow and even appear

unjust, then the convenient invocation or non-invocation of the technical rules of procedure acquires a more egregious, distasteful taste. Such situation must be avoided by any court with a long-term perspective of its role, and that understands the need to guard its legacy.

On the substantial ruling in this case, while I have full sympathy for the financial condition of the public respondent and the National Government, Justice Brion's assessment of the respective legal rights and obligations of the parties is correct. In an interim voting that took place in this case, I had wanted, and indeed voted for, the imposition of a mere 6% interest and not a 12% interest on the principal amount due petitioners. Thus, I do not fully agree with the rate of interest imposed by the Decision. It is also correct, however, that a strong signal must be sent that the Government cannot willfully refuse to promptly pay a just obligation. The problem that remains unaddressed, though, is who should bear responsibility for the unjust delay in payment that happened here. The *ponencia* has already named the various government actors whose prompt resolution of petitioners' claim was required, and who failed to discharge such duty. Unless these actors are made operationally liable for the unjust delay, it will be the taxpayer who will ultimately bear the adverse financial consequences of our findings and directive in this case, as usually happens in most public accountability cases. Our public officers responsible for guarding the coffers of our government from irresponsible acts of its officers must do more than just accept the immediate effects of the *fallo* of the Decision in this case.

DISSENTING OPINION

ABAD, *J.*:

I am unable to agree with the *ponencia* of Mr. Justice Arturo D. Brion that the respondent Land Bank of the Philippines (Land Bank) is guilty of delay and must, therefore, pay petitioners Apo Fruits Corp. (AFC) and Hijo Plantation, Inc. (HPI) 12% interest on the compensation awarded to them for their lands.

Brief Factual Background

On October 12, 1995 AFC-HPI voluntarily offered to sell their lands[1] to the government under Republic Act 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL). Land Bank valued the properties at ₱165,484.47 per hectare, but AFC-HPI rejected the offer of that amount. Consequently, on instruction of the Department of Agrarian Reform (DAR), Land Bank deposited partial payments in AFC-HPI's bank accounts. Land Bank deposited for AFC and HPI ₱26,409,549.86 and ₱45,481,706.76, respectively, or a total of ₱71,891,256.62.

Upon revaluation of the expropriated properties, Land Bank eventually made additional deposits, placing the total amount paid at ₱411,769,168.32 (₱71,891,256.62 + ₱339,877,911.70), an increase of nearly five times. Both AFC-HPI withdrew the amounts. Still, they filed separate complaints for just compensation with the DAR Adjudication Board (DARAB). But due to DARAB's inaction, they later filed complaints for determination of just compensation with the Regional Trial Court (RTC) of Tagum City.

On September 25, 2001 the RTC ruled in favor of AFC-HPI, fixing the just compensation for 1,338.6027 hectares of land at ₱1,383,179,000.00 (₱411,769,168.32 + ₱971,409,831.68), more than double the previous estimated value, and ordering the payment of 12% interest per annum from the time of taking until the finality of the decision plus attorney's fees.

The Third Division of this Court affirmed the RTC decision in its February 6, 2007 Decision. But, on motion for reconsideration, the Third Division deleted the award of interest and attorney's fees in its December 19, 2007 resolution. Upon finality of this resolution, entry of judgment was issued on May 16, 2008.

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[1] AFC owned 640.3483 hectares, while HPI owned 805.5308 hectares, for a total of 1,445.8791 hectares. However, the RTC later fixed just compensation for only 1,338.6027 hectares of land.

Undaunted, AFC-HPI filed a **second motion for reconsideration** with respect to the denial of the award of legal interest and attorney's fees and a motion to refer the second motion for reconsideration to the Court *En Banc*. The Third Division subsequently referred the case to the *En Banc*. The Court *En Banc* accepted the referral but on December 4, 2009 it denied with finality AFC-HPI's second motion for reconsideration. An entry of its finality was duly recorded.

Still AFC-HPI filed a **third motion for reconsideration** on the issue of legal interest. On October 12, 2010 the *En Banc* granted AFC-HPI's motion for reconsideration and restored the additional award of 12% legal interest in their favor equivalent to ₱1.331 billion. The Court held that although Land Bank's deposits might have been sufficient for the purpose of immediate taking of the properties, the deposits were insufficient to excuse Land Bank from the payment of interest on the unpaid balance. It found Land Bank to have grossly undervalued AFC-HPI's properties, thus resulting in a prolonged suit. On the issue of immutability of judgment, the Court said that the matter was of transcendental importance since it involved agrarian reform.

The Court voted 8-3-1 to issue the above resolution. Associate Justice Arturo D. Brion wrote it; Associate Justices Conchita Carpio Morales, Presbitero J. Velasco, Jr., Mariano C. Del Castillo, Martin S. Villarama, Jr., Jose Portugal Perez, Jose Catral Mendoza, and Maria Lourdes P. A. Sereno concurred. Associate Justice Lucas P. Bersamin dissented along with Chief Justice Renato C. Corona and Associate Justice Antonio Eduardo B. Nachura. Associate Justice Teresita J. Leonardo-de Castro maintained her previous vote for a reduced interest of ₱400 million. Associate Justice Antonio T. Carpio took no part. Associate Justices Roberto A. Abad and Diosdado M. Peralta who earlier voted to deny the motion for reconsideration were on leave when the voting took place.

Land Bank moved for reconsideration of this turn-around resolution but the *En Banc* resolved to deny the same on November 23, 2010 under the same vote. Consequently, Land

Bank filed another motion asking for the deletion of the award of legal interest.

The Issues Presented

Two issues emerged during the deliberation in this case:

1. Whether or not respondent Land Bank has been guilty of delay and, therefore, should be made to pay AFC-HPI ₱1.331 billion in interest;

2. Whether or not it was error for the *En Banc* to have issued the October 12, 2010 resolution ordering payment of such interest, given that AFC-HPI's third motion for reconsideration was absolutely prohibited and, even if it were to be treated as a second motion for reconsideration, the *En Banc* violated its Internal Rules which require a vote of two-thirds of its actual membership (10 votes) to entertain such a motion.

Discussion

First. The *ponencia* blames Land Bank for the twelve-year delay in the payment of compensation to AFC-HPI, claiming that had the government not grossly undervalued the expropriated properties and thus betrayed lack of good faith, it could have prevented the lengthy legal proceedings in the case.

But the fact that Land Bank did not readily agree with AFC-HPI regarding the value of the lands should not mean that Land Bank acted in bad faith or deliberately delayed payment of compensation. The records show that Land Bank valued the lands, using the compensation formula that Section 17 of Republic Act 6657 and the DAR's implementing rules provide. Can that be malicious or in bad faith?

Granted that Land Bank appealed the RTC decision, which awarded a compensation of ₱1,383,179,000.00 to AFC-HPI (more than double what the CARL formula provided) plus 12% interest per annum until the finality of its decision, such appeal can hardly be regarded as dilatory and baseless. Indeed, although the Court affirmed the principal amount that the RTC fixed, it

ordered deleted the grossly excessive interest of 12% counted from the date of taking or a period of about 12 years. Even if the Court changed its mind on a third motion for reconsideration and after the finality of its judgment, it cannot be said, therefore, that Land Bank's appeal was malicious or in bad faith.

The Court's ruling in *Land Bank of the Philippines vs. Wycoco*[2] is clear. Interest on just compensation is due only in case of delay in payment, a fact which must be adequately proved. If, for instance, property is taken for public use before compensation is given or deposited in favor of the landowner, then there is delay and the final compensation must include an award of interest.

Here, there is no evidence to prove that Land Bank was in delay. On the contrary, pertinent amounts were deposited, specifically ₱26,409,549.86 for AFC and ₱45,481,706.76 for HPI, within fourteen months after AFC-HPI filed the complaint for just compensation before the RTC. Notably, Land Bank made the deposits prior to AFC-HPI's titles being cancelled. The bank afterwards made additional payments based on upgraded values, swelling its total payments to ₱411,769,168.32 even before the RTC case was filed.

The *ponencia* points out that Land Bank paid only a trifling of the actual value of properties as later determined by the Court. But I do not think that ₱411,769,168.32, a third of the RTC award and paid even before the suit was filed, can be regarded as trifling. AFC-HPI did not linger long to withdraw the deposits, negating any notion that it suffered long with nothing to assuage its feelings about the compensation.

Likewise, Land Bank could not have foreseen that it would take twelve years for the case to be resolved. AFC-HPI themselves erroneously filed their complaints with the DARAB instead of directly seeking recourse with the courts. The *ponencia* is requiring Land Bank to pay for that error and the delays rooted in it.

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[2] G.R. No. 140160, January 13, 2004, 419 SCRA 67.

To iterate, Land Bank had every right to defend an initial position dictated by law and not risk sending bank officers to jail for giving undue benefit to others in violation of the Anti-graft and Corrupt Practices Act. Land Bank should not be penalized for taking such cautious position with respect to money belonging to the government. The Court should not, by its present ruling, encourage government agencies to pay more than what the law or the rules prescribe unless directed differently by superior orders. Notably, when the Third Division of this Court handed down its December 19, 2007 resolution, Land Bank immediately settled its unpaid balance of ₱971,409,831.68 even before entry of judgment was issued in the case.

The *ponencia* states that a second motion for reconsideration is prohibited. But, it must be remembered that the October 12, 2010 resolution which Land Bank assails itself resulted from the grant of a third motion for reconsideration filed by AFC-HPI. By then, the February 6, 2007 Decision and December 19, 2007 Resolution of this Court had already become final and executory, and Land Bank had already complied with the same by paying the judgment amounts. By the rule that the *ponencia* invokes, the Court should not have reopened the case in the first place.

The immutability doctrine admits exceptions such as: a) the correction of clerical errors; b) the *nunc pro tunc* entries that cause no prejudice to any party; c) void judgments; and d) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. This case does not fall under any of the exceptions, nor does it involve life or liberty—only money.

Second. The Court must recall its October 12, 2010 resolution granting AFC-HPI's motion for reconsideration for having been voted on by the Justices present without an inkling or awareness that it was actually a **third motion for reconsideration**. It was not only a prohibited motion like second motions for reconsideration but, evidently a motion in the category of the not-filed, beyond judicial cognizance, or non-existent. The

Court unwittingly made a mistake in acting on a "nothing" motion. Consequently, it must rectify this mistake by immediately recalling such resolution.

And, even if AFC-HPI's motion can be treated as another **second motion for reconsideration**, which it is not, the Court *En Banc* violated Section 3, Rule 15, of its Internal Rules which provides that it cannot entertain a second motion for reconsideration except upon a vote of two-thirds of its actual membership in the highest interest of justice. Thus:

SEC. 3. Second motion for reconsideration. – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. xxx

Justice Brion of course points out that since twelve Justices took part in acting on AFC-HPI's motion for reconsideration, it may be assumed that such number agreed to entertain the same. But this assumption will not do since the rules require the taking of "**a vote**" on whether to entertain such a motion or not. An assumption of concurrence is not the equivalent of the taking of a vote. Moreover, in truth, those who voted to approve the October 12, 2010 resolution simply forgot to vote before hand on whether or not to entertain AFC-HPI's motion for reconsideration.

Notably, it is inevitable that the procedure for entertaining second motions for reconsideration should follow the two-step procedure observed when a Division wants to refer a case to the *En Banc* for its consideration. This requires the *En Banc* to first accept the referral before acting to decide the referred case. This was not done in the present case. The Minutes do not show that the *En Banc* voted by at least two-thirds of its actual membership to entertain the motion for reconsideration before approving the draft resolution for release.

The omission is fatal to the resolution because the requirement of a two-thirds vote of the *En Banc*'s actual membership is a specially difficult bar that the Justices precisely adopted unanimously to solve the problem of endless motions for reconsideration that undermine the stability of the judgments of courts. If the *En Banc* ignores this rule to accommodate an award of ₱1.331 billion in interest to AFC-HPI, the public who will pay for it would probably not be able to understand the *En Banc*'s reason for making such an exception.

For the above reasons, I vote to *RECALL* the Court's Resolution dated October 12, 2010 and *REINSTATE* the Resolution dated December 4, 2009. This would render moot and academic the question of whether or not to give due course to respondent Land Bank's motion for reconsideration.

FIRST DIVISION

[A.C. No. 7771. April 6, 2011]

PATRICIO GONE, *complainant, vs.* **ATTY. MACARIO GA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; FAILURE TO RECONSTITUTE OR TURN OVER THE RECORDS OF THE CASE TO HIS CLIENT IS A VIOLATION OF HIS DUTY TO SERVE CLIENTS WITH COMPETENCE AND DILIGENCE; COUNSEL'S SENTIMENTS AGAINST HIS CLIENT, NOT A VALID REASON.— Respondent Atty. Ga breached these duties when he failed to reconstitute or turn over the records of the case to his client, herein complainant Gone. His negligence manifests lack of competence and diligence required of every lawyer. His failure to comply with the request of his

client was a gross betrayal of his fiduciary duty and a breach of the trust reposed upon him by his client. Respondent's sentiments against complainant Gone is not a valid reason for him to renege on his obligation as a lawyer. The moment he agreed to handle the case, he was bound to give it his utmost attention, skill and competence. Public interest requires that he exerts his best efforts and all his learning and ability in defense of his client's cause. Those who perform that duty with diligence and candor not only safeguard the interests of the client, but also serve the ends of justice. They do honor to the bar and help maintain the community's respect for the legal profession. If respondent believed that he will not be able to represent complainant effectively because of what the latter has done to his family, then he should have withdrawn his services as a lawyer. Had it not been for complainant's insistence, his labor case would have forever remained dormant. The fact that respondent is retained as the lawyer of the complainant, he was duty bound to give his best service. His failure to do so constitutes an infringement of his oath.

2. ID.; ID.; UNJUSTIFIED DISREGARD OF THE LAWFUL ORDERS OF THE COURT AND THE IBP CONSTITUTES UTTER DISRESPECT FOR THE JUDICIARY AND HIS FELLOW LAWYERS.— We note respondent's disregard of the IBP Commission on Bar Discipline's directive for him to reconstitute and turn over the records of the case to complainant. Likewise, respondent unjustifiably ignored the directive of the Court for him to explain his failure to comply with IBP Resolution No. XVIII-2007-94. Respondent's unjustified disregard of the lawful orders of this Court and the IBP is not only irresponsible, but also constitutes utter disrespect for the Judiciary and his fellow lawyers. His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey Court orders and processes and are expected to stand foremost in complying with Court directives being themselves officers of the Court. As an officer of the Court, respondent is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely. This is also true of the orders of the IBP as the investigating arm of the Court in administrative cases against lawyers.

R E S O L U T I O N

PEREZ, ***J.*:**

This case stemmed from the complaint for disciplinary action dated 23 October 1989 filed by Patricio Gone against Atty. Macario Ga before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP). The complaint was due to Atty. Ga's failure to reconstitute or turn over the records of the case in his possession. Complainant Gone reported that Atty. Ga is his counsel in NLRC Case No. RB-IV-2Q281-78 entitled "*Patricio Gone v. Solid Mills, Inc.*" The case was dismissed by the Labor Arbiter and was elevated to the National Labor Relations Commission (NLRC).

Complainant alleged that on 13 December 1983, the NLRC building in Intramuros, Manila was burned and among the records destroyed was his appealed case.

Complainant Gone further reported that as early as 8 March 1984, Atty. Ga had obtained a certification from the NLRC that the records of NLRC Case No. RB-IV-2Q281-78 were burned. Despite knowledge of the destruction of the records, Atty. Ga allegedly did not do anything to reconstitute the records of the appealed case.

On 9 September 1989, complainant allegedly sent a letter to Atty. Ga requesting him to return the records of the case in his possession. As of date of complaint, Atty. Ga has yet to turn over the records. Complainant submits that his counsel's continued refusal has caused great injustice to him and his family.[1]

On 16 February 1999, Commissioner Gonzales-delos Reyes, IBP Commission on Bar Discipline, issued an Order directing respondent Ga to file his answer on the complaint.[2]

In a letter dated 22 November 1999, Atty. Ga explained that as far as he could recall, during the pendency of their motion

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[1] *Rollo*, p. 1. Letter-complaint of Patricio Gone.

[2] *Id.* at 3.

for reconsideration, the NLRC Office in Manila caught fire. Although worried of the records of their case, he was relieved when he received summons from the NLRC setting the case for hearing. It was unfortunate, however, that in the two scheduled hearings set by the NLRC herein complainant failed to appear. For such absence, the NLRC allegedly shelved their case.[3]

Atty. Ga averred that had it not been for the instant complaint, he would not have, as he never, heard from complainant Gone since 1984. What he was aware of was the latter's abandonment of his family way back in 1978. Complainant's wife is the relative of Atty. Ga, being the daughter of his first cousin.[4]

The instant case was set for presentation of evidence on 17 January 2000. On said date, complainant appeared without counsel while respondent failed to appear.[5] Several hearings were set for the case but these were reset for failure of one or both of the parties to appear.[6]

In the hearing held on 19 June 2000, complainant appeared with counsel but respondent failed to appear despite notice. During that hearing, the Commissioner asked complainant if there was a possibility for the case to be settled amicably considering that respondent is a relative of his wife. The complainant answered in the affirmative and the case was reset to 24 July 2000. The two succeeding hearings scheduled by the Commissioner were again reset. On 10 November 2000, a hearing was conducted wherein respondent Ga appeared while complainant was absent despite notice. In view of the latter's absence, respondent Ga prayed for time to file a Motion to Dismiss.[7]

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[3] *Id.* at 7. Answer of Atty. Macario Ga dated 22 November 1999.

[4] *Id.*

[5] *Id.* at 9. Order of IBP Commissioner Victoria Gonzalez-de los Reyes.

[6] *Id.* at 10, 12 and 14.

[7] *Id.* at 20. Order of IBP Commissioner Victoria Gonzalez-de los Reyes.

In his Motion to Dismiss dated 8 December 2000,[8] respondent Ga alleged that he had a heart to heart talk with complainant about his labor case and the latter may have already understood that it was not respondent's fault that the case was shelved by the NLRC. He averred that complainant may have already been dissuaded from pursuing the case, thus his absence in the hearing held on 10 November 2000. Nevertheless, if there is still hope for the case, he commits to help complainant by whatever means he can.

On 14 February 2007, Commissioner Marilyn S. Guzman, IBP Commission on Bar Discipline, submitted her report recommending that respondent Atty. Ga be censured for violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility.[9]

On 19 September 2007, the Board of Governors of the IBP adopted and approved with modification, the report and recommendation of the Investigating Commissioner.[10] Respondent Atty. Ga was censured for violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility and was directed to reconstitute and turn over the records of the case to complainant, with stern warning that failure to do so would merit a stiffer penalty.

In a resolution dated 2 June 2008, the Office of the Bar Confidant and the IBP were directed to inform the Court if any motion for reconsideration was filed in the case. The IBP was further directed to confirm if respondent has complied with Resolution No. XVIII-2007-94 dated 19 September 2007 directing him to reconstitute and turn over the records of the case to complainant.[11]

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[8] *Id.* at 21.

[9] *Id.* at 26. Report and recommendation of Commissioner Marilyn S. Guzman.

[10] *Id.* at 23. Resolution No. XVIII-2007-94, CBD Case No. 114.

[11] *Id.* at 28.

In compliance with the resolution, the Office of the Bar Confidant reported that no motion for reconsideration or petition for review was filed by either party.[12]

The IBP Commission on Bar Discipline, for its part, reported that no motion for reconsideration was filed by either party and that respondent failed to comply with IBP Resolution No. XVIII-2007-94 dated 19 September 2007.[13]

Thus, on 2 September 2009, the Court issued a resolution requiring Atty. Ga to explain his failure to comply with IBP Resolution No. XVIII-2007-94.[14] Record of the instant case reveals that the resolution dated 2 September 2009 was received by Atty. Ga on 15 October 2009. To date, Atty. Ga has yet to comply with the resolution.

We agree with the findings and recommendation of the IBP. The Code of Professional Responsibility mandates lawyers to serve their clients with competence and diligence. Rule 18.03 and Rule 18.04 state:

> Rule 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
>
> Rule 18.04. A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Respondent Atty. Ga breached these duties when he failed to reconstitute or turn over the records of the case to his client, herein complainant Gone. His negligence manifests lack of competence and diligence required of every lawyer. His failure to comply with the request of his client was a gross betrayal of his fiduciary duty and a breach of the trust reposed upon him by his client. In the case of *Navarro v. Meneses*,[15] the Court held:

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[12] *Id.* at 30.

[13] *Id.* at 31.

[14] *Id.* at 35.

[15] CBD, A.C. No. 313, 30 January 1998, 285 SCRA 586, 593.

It is settled that a lawyer is not obliged to act as counsel for every person who may wish to become his client. He has the right to decline employment subject however, to the provision of Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of a client, he owes fidelity to such cause and must always be mindful of the trust and confidence reposed to him. Respondent Meneses, as counsel, had the obligation to inform his client of the status of the case and to respond within a reasonable time to his client's request for information. Respondent's failure to communicate with his client deliberately disregarding its request for an audience or conference is an unjustifiable denial of its right to be fully informed of the developments in and the status of its case.

Respondent's sentiments against complainant Gone is not a valid reason for him to renege on his obligation as a lawyer. The moment he agreed to handle the case, he was bound to give it his utmost attention, skill and competence. Public interest requires that he exerts his best efforts and all his learning and ability in defense of his client's cause. Those who perform that duty with diligence and candor not only safeguard the interests of the client, but also serve the ends of justice.[16] They do honor to the bar and help maintain the community's respect for the legal profession.[17]

If respondent believed that he will not be able to represent complainant effectively because of what the latter has done to his family, then he should have withdrawn his services as a lawyer. Had it not been for complainant's insistence, his labor case would have forever remained dormant. The fact that respondent is retained as the lawyer of the complainant, he was duty bound to give his best service. His failure to do so constitutes an infringement of his oath.

In addition, We note respondent's disregard of the IBP Commission on Bar Discipline's directive for him to reconstitute and turn over the records of the case to complainant. Likewise,

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[16] *Burbe v. Atty. Magulta*, 432 Phil. 840, 848 (2002).

[17] *Id.*

respondent unjustifiably ignored the directive of the Court for him to explain his failure to comply with IBP Resolution No. XVIII-2007-94.

Respondent's unjustified disregard of the lawful orders of this Court and the IBP is not only irresponsible, but also constitutes utter disrespect for the Judiciary and his fellow lawyers.[18] His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey Court orders and processes and are expected to stand foremost in complying with Court directives being themselves officers of the Court.[19]

As an officer of the Court, respondent is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely.[20] This is also true of the orders of the IBP as the investigating arm of the Court in administrative cases against lawyers.[21]

Respondent should strive harder to live up to his duties of observing and maintaining the respect due to the Courts,[22] respect for law and for legal processes,[23] and of upholding the integrity and dignity of the legal profession[24] in order to perform his responsibilities as a lawyer effectively.

All told, We could suspend respondent for his transgressions. Considering, however, that he is already in the twilight of his career and considering further that he was not entirely to be blamed for the archiving of the labor case, complainant's absence during the hearings being contributory therein, We deem the penalty of fine in the amount of ₱5,000.00 sufficient sanction

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[18] *Ong v. Grijaldo*, A.C. No. 4724, 30 April 2003, 402 SCRA 1; *Sencio v. Calvadores*, A.C. No. 5841, 20 January 2003, 395 SCRA 393.

[19] *Ngayan v. Tugade*, A.C. No. 2490, 7 February 1991, 193 SCRA 779, 783.

[20] *Ong v. Grijaldo*, *supra* note 18 at 10-11.

[21] Rule 139-B, Revised Rules of Court.

[22] Canon 11, Code of Professional Responsibility.

[23] Canon 1, Code of Professional Responsibility.

[24] Canon 7, Code of Professional Responsibility.

under the circumstances. Such consideration would be more in line with the very purpose of administrative cases against lawyers, that is, not so much to punish but to instill discipline in them, as well as, protect the integrity of the Court and shelter the public from the misconduct and inefficiency of lawyers.

WHEREFORE, respondent Macario Ga is hereby fined in the amount of Five Thousand Pesos (₱5,000.00) for his failure to comply with the directive in Resolution No. XVIII-2007-94 dated 19 September 2007 of the Board of Governors of the Integrated Bar of the Philippines. Atty. Ga is given a final warning that a more drastic punishment shall be imposed upon him should he fail to comply with the directive for him to reconstitute and turn over the records of the case to complainant.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-10-2791. April 6, 2011]
(Formerly A.M. No. 10-3-91-RTC)

JUDGE RENATO A. FUENTES, REGIONAL TRIAL COURT, BRANCH 17, DAVAO CITY, *complainant, vs.* **ATTY. ROGELIO F. FABRO, BRANCH CLERK OF COURT, SAME COURT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; DELAY IN TRANSMITTING THE RECORDS OF CASES TO THE

COURT OF APPEALS CONSTITUTES GROSS NEGLIGENCE.— We agree with the OCA finding that Atty. Fabro was guilty of gross negligence of duty for being remiss in his duty to transmit to the CA the records of Civil Case Nos. 29,537-2003 and 29,019-2002 within the required period. The Rules of Court in Section 10 of Rule 41 provides that within thirty (30) days after the perfection of appeal, the clerk of court of the lower court has the duty to transmit the records to the appellate court. Judge Fuentes gave due course to the appeals but the records were not transmitted to the CA within the 30-day period provided in the Rules.

2. ID.; ID.; ID.; ID.; ID.; FINE, IMPOSED.— We agree with the OCA recommendation of imposing a fine with warning on Atty. Fabro. We hold, however, that the fine should be increased to Twenty Thousand Pesos (₱20,000.00) considering the number of incidents of delay and the considerable time involved.

D E C I S I O N

BRION, *J.*:

For the Court's resolution is the letter-complaint[1] dated July 17, 2009 of Judge Renato A. Fuentes (*Judge Fuentes*), Regional Trial Court, 11th Judicial Region, Branch 17, Davao City, addressed to the Office of the Court Administrator (*OCA*). Judge Fuentes charged Branch Clerk of Court Atty. Rogelio F. Fabro (*Atty. Fabro*) and Civil Records In-Charge Ofelia Salazar (*Salazar*) with gross negligence of duty. This was the second letter of Judge Fuentes to the OCA on Atty. Fabro and Salazar.

Background Facts

On May 19, 2009, Judge Fuentes wrote the OCA to report the negligence committed by Atty. Fabro and Salazar in not elevating to the Court of Appeals, Cagayan de Oro City (*CA*) for more than six (6) years the records of Civil Case No. 29,537-2003, entitled *Teodoro Polinar, et al. v. Hon. Antonio D. Laolao.*

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

In his second letter to the OCA, Judge Fuentes again reported the negligence of Atty. Fabro and Salazar for failing to elevate to the CA the records of Civil Case No. 29,019-2002, entitled *Medardo E. Escarda v. Celso E. Escarda and the Register of Deeds of Davao City*. Judge Fuentes claimed that he approved Medardo Escarda's Notice of Appeal in his April 10, 2007 Order and directed the Branch Clerk of Court to elevate the entire records to the CA. Apparently, the records were not elevated because Medardo Escarda's counsel, Atty. Santos E. Torreña, Jr., wrote Judge Fuentes on July 14, 2009[2] to inquire if their appeal and records have been forwarded to the CA. Atty. Torreña enclosed a CA letter[3] stating that "[t]here is no showing that the case was elevated on appeal to this Court as per verification from the records and list of cases from 2007 until the present time."

In his second letter to the OCA, Judge Fuentes related that:

> What is alarming in this second discovery, however, is the record consisting of the Notice of Appeal and the Order, elevating the case to the Honorable Court of Appeals, along with the other documents, such as Decision of the Court, Motion for Reconsideration and Order of denial, were not attached in the main record, consisting of pleadings and transcript of stenographic notes but after exerting pressure on the Civil Records In-Charge, to look for the remaining portion of the records, she turned-over the remaining records, after one week, but was observed by the undersigned, purposely separated, so that the compliance of the Order to elevate the entire records to the Appellate Court, can be justified by her and the Branch Clerk of Court.

The OCA required Atty. Fabro to comment on Judge Fuentes' letter. Atty. Fabro filed his comment on August 8, 2009.[4] He averred that the records of Civil Case No. 29,537-2003 have been elevated to the CA and that Salazar admitted that it was her own fault and that she found that the record, "already bounded for transmittal to the Court of Appeals, was indeed

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[2] *Id.* at 22.

[3] *Id.* at 23.

[4] *Id.* at 12-14.

mixed up with the files of old cases transferred to the other store room" at a time when the staff of the RTC Branch 17 was decongesting the office store room to give way to newly filed cases. He also mentioned that his office was a very busy one, that he had his own duties, and that he could not "at all times" spend his time supervising subordinate employees to ensure their performance of their normal duties without prejudice to his own duties and responsibilities.

On March 2, 2010, the OCA submitted a report and recommendation[5] that: (1) the case be re-docketed as a regular administrative matter; and (2) Atty. Fabro be fined ₱5,000.00 for the delay in transmitting the records of two cases to the CA, with a warning that a repetition of the same or similar act in the future shall be dealt with more severely.

The OCA Report stated that although the records of the cases have already been transmitted to the CA, the OCA cannot tolerate the long delay in transmission nor give credence to Atty. Fabro's reasons for the delay. The OCA stressed that the administrative functions of the Branch Clerk of Court are vital to the prompt and proper administration of justice and that the timely transmittal to the appellate court of the records of appealed cases ensures the speedy disposition of cases; any delay in the transmission of the case records would hamper the proper administration of justice. The OCA added that it has been held that the failure of the clerk of court to transmit the records of the case constitutes negligence and warrants disciplinary action.

The Court's Ruling

We agree with the OCA finding that Atty. Fabro was guilty of gross negligence of duty for being remiss in his duty to transmit to the CA the records of Civil Case Nos. 29,537-2003 and 29,019-2002 within the required period. The Rules of Court in Section 10 of Rule 41[6] provides that within thirty

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

[6] Rule 41, Section 10. Duty of clerk of court of the lower court upon

(30) days after the perfection of appeal, the clerk of court of the lower court has the duty to transmit the records to the appellate court. Judge Fuentes gave due course to the appeals but the records were not transmitted to the CA within the 30-day period provided in the Rules.

The records of Civil Case No. 29,019-2002 (*Medardo E. Escarda v. Celso E. Escarda*) were mailed on August 15, 2009[7] or **two (2) years after** the issuance of the Order directing their transmittal to the CA (April 10, 2007). The records of Civil Case No. 29,537-2003 (*Teodoro Polinar, et al. vs. Hon. Antonio D. Laolao*) were transmitted only **after more than six (6) years** as claimed by Judge Fuentes. Clearly, Atty. Fabro as the clerk of court of the lower court, was grossly remiss in his duty. We agree with the OCA recommendation of imposing a fine with warning on Atty. Fabro. We hold, however, that the fine should be increased to Twenty Thousand Pesos (₱20,000.00) considering the number of incidents of delay and the considerable time involved.

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perfection of appeal. — Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court:

(a) To verify the correctness of the original record or the record on appeal, as the case may be, and to make a certification of its correctness;

(b) To verify the completeness of the records that will be transmitted to the appellate court;

(c) If found to be incomplete, to take such measures as may be required to complete the records, availing of the authority that he or the court may exercise for this purpose; and

(d) To transmit the records to the appellate court.

If the efforts to complete the records fail, he shall indicate in his letter of transmittal the exhibits or transcripts not included in the records being transmitted to the appellate court, the reasons for their non-transmittal, and the steps taken or that could be taken to have them available.

The clerk of court shall furnish the parties with copies of his letter of transmittal of the records to the appellate court. (10a)

[7] *Rollo*, p. 17

WHEREFORE, we find Atty. Rogelio F. Fabro, Branch Clerk of Court, RTC Branch 17, Davao City, *GUILTY* of gross negligence of duty for the delay in transmitting to the Court of Appeals, Cagayan de Oro City, the records of Civil Case No. 29,019-2002, entitled *Medardo E. Escarda v. Celso E. Escarda*, and Civil Case No. 29,537-2003, entitled *Teodoro Polinar, et al. v. Hon. Antonio D. Laolao*. We hereby impose on him a *FINE* of Twenty Thousand Pesos (₱20,000.00) with a *WARNING* that a repetition of the same or similar act shall be dealt with more severely.

The Office of the Court Administrator is directed to inform the Court of the action taken against Civil Records In-Charge Ofelia Salazar.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. RTJ-11-2279. April 6, 2011]
(Formerly OCA IPI No. 08-3041-RTJ)

FLORENCE EBERSOLE DEL MAR-SCHUCHMAN, *complainant, vs.* **JUDGE EFREN M. CACATIAN, Regional Trial Court, Branch 35, Santiago City, Isabela,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; AN ACCUSATION OF EXTORTION AND RENDERING AN UNJUST JUDGMENT OR ORDER AGAINST A JUDGE MUST BE PROVEN BEYOND REASONABLE DOUBT.— [A]n accusation of

extortion is very easy to concoct and difficult to disprove. The proceedings in charges of this character are in their nature highly penal in character and are to be governed by the rules of law applicable to criminal cases. Thus, as in this case, it must, therefore, be proven beyond reasonable doubt inasmuch as what is imputed against respondent judge connotes a misconduct so grave that, if proven, would entail dismissal from the bench. The quantum of proof required should be more than substantial. It will take more than mere pleadings and affidavits to lend an aura of respectability and credibility to complainant's accusation. A finding of guilt should come from the strength of the complainant's evidence and not from the weakness of the respondent judge's defense. Complainant failed to satisfy this requirement. Corollarily, the charge of knowingly rendering unjust judgment or order must also fail. To hold a judge liable for knowingly rendering an unjust judgment or order, it must be shown beyond reasonable doubt that the judgment or order is unjust and it was made with a conscious and deliberate effort to do an injustice. x x x We reiterate that the ground for the removal of a judicial officer should be established beyond reasonable doubt. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption, incompetency, *etc.* The general rule in regard to admissibility in evidence in criminal trials apply.

2. ID.; ID.; TRANSACTING WITH A PARTY IN FACILITATING THE TRANSFER OF THE TITLES IS IN EFFECT ENGAGING IN A PROHIBITED COMMERCIAL TRANSACTION.— [W]e nevertheless share the Investigating Justice's view that respondent judge is guilty of violating Canon 5, Rule 5.02 of the Code of Judicial Conduct for his act of transacting with complainant in facilitating the transfer of the titles of the properties from complainant's mother to complainant and her siblings during the conference in respondent judge's chamber. x x x In the instant case, Judge Cacatian, in proposing to facilitate the transfer of titles of the properties, in effect engaged in a commercial transaction that gave him an appearance of impropriety. In *Agustin v. Mercado,* We declared that employees of the court should have no business meeting with litigants or their representatives under any circumstance. This prohibition is more compelling when it involves a judge who, because of his position, must

> strictly adhere to the highest tenets of judicial conduct; a judge must be the embodiment of competence, integrity and independence. x x x The Code does not qualify the prohibition. The intent of the rule is to limit a judge's involvement in the affairs and interests of private individuals to minimize the risk of conflict with his judicial duties and to allow him to devote his undivided attention to the performance of his official functions.

APPEARANCES OF COUNSEL

Maria Johanna N. Vallejo for complainant.

D E C I S I O N

PERALTA, *J.*:

The instant case before us now is an offshoot of A.M. OCA IPI No. 08-3041-RTJ wherein the Third Division, in a Resolution[1] dated September 16, 2009, resolved to adopt and approve the recommendation of the Office of the Court Administrator (OCA), which dismissed the charges of Florence Ebersole Del Mar-Schuchman (complainant) against Judge Efren Cacatian (Judge Cacatian) for lack of merit and for being judicial in nature.

To recapitulate, the antecedent facts of the case are as follows:

Complainant Schuchman is one of the children of Norma Ebersole Del Mar who is the party-plaintiff in Civil Case No. 35-2373, entitled *Norma Ebersole Del Mar v. Robert Del Mar* for reconveyance of ownership and possession of disputed properties.

On October 21, 1997, the Regional Trial Court of Santiago City, Branch 35, then presided by Judge Demetrio Calimag, Jr., rendered a decision[2] in favor of plaintiff.

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[1] *Rollo*, pp. 216-217.

[2] *Id.* at 42-47.

Defendant Robert Del Mar appealed to the Court of Appeals. However, in a Resolution[3] dated January 13, 1999, the appeal was dismissed due to appellant's failure to file an appellant's brief, in violation of Section 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.

Defendant Robert Del Mar then filed a petition for *certiorari* before this Court, but was, likewise, dismissed in a Resolution[4] dated March 13, 2002 on the ground that *certiorari* was not a substitute for a lost appeal.

On September 7, 2005, upon motion of plaintiff-appellee, Judge Efren Cacatian issued a Writ of Execution[5] to implement the October 21, 1997 Decision of the trial court.

Meanwhile, before the full implementation of the writ of execution, complainant alleged that they were called to the chamber of Judge Cacatian for a conference. Complainant narrated that during the conference, Judge Cacatian proposed a package deal for the issuance of the titles of the subject properties in the names of the three (3) heirs of judgment-plaintiff, including herself. In exchange, complainant was asked to provide the amount of ₱350,000.00 as fee for "real estate research fixing."

Complainant alleged that she immediately asked her niece, witness Helen Grace Ebersole Alamar (Alamar), to go to Roger Colobong, who was working at the Philippine National Bank, Santiago City Branch, to obtain ₱50,000.00. On the same day, complainant alleged that she gave ₱50,000.00 to Judge Cacatian and promised to give the remaining ₱300,000.00 as soon as she returned from her trip to the United States of America.

However, upon inquiry from the Bureau of Internal Revenue, complainant discovered that the settlement of the estate tax would only cost ₱125,000.00. Complainant then opted to settle the amount immediately, thus, new certificates of titles were eventually issued in their names.

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[3] *Id.* at 49.

[4] *Id.* at 51-64.

[5] *Id.* at 86-89.

Subsequently, defendant Robert Del Mar filed: (1) a Manifestation with Motion to Recall All Orders Issued by this Court for the Enforcement of the Judgment dated April 4, 2007; (2) Motion for Reconsideration dated April 12, 2007; and (3) Motion to Suspend Further and/or Full Implementation of the Writ of Execution dated May 10, 2007.

On July 17, 2007, respondent judge granted said motions,[6] the dispositive portion of which reads:

> WHEREFORE, the motions are granted. Consequently, the following Orders are hereby reversed, recalled, revoked and/or cancelled, to wit:
>
> a.) Order of September 7, 2005, granting the motion for execution;
> b.) Writ of Execution also dated September 7, 2005; and
> c.) Resolution dated March 19, 2007, ordering the full execution of the decision.
>
> Accordingly, the Register of Deeds is hereby ordered: (1) to reinstate the following certificates of titles, namely: T-82257, T-82260, T-82261, T-82258, T-82264, T-82263, T-82259 and T-134664 back in favor of defendant Robert Del Mar; and 2) to cause the cancellation of these titles, namely: TSC-9463, TSC-9464, TSC-9465, TSC-9466, TSC-9467, TSC-9468, TSC-9469 and TSC-9470 in the name of deceased plaintiff Norma Ebersole Del Mar, and all derivative titles therefrom.
>
> Finally, the executing sheriff is ordered to defer the execution of the decision of this case.
>
> SO ORDERED.

Feeling aggrieved, complainant filed the instant administrative complaint against Judge Cacatian. Complainant asserted that respondent judge exercised grave abuse of discretion amounting to lack of jurisdiction in issuing the Orders dated July 17, 2007 and November 21, 2007. She maintained that in issuing said Orders, respondent judge, in effect, reversed and set aside the trial court's Decision dated October 21, 1997 which was already rendered final by the Supreme Court in its Decision dated March 13, 2002.

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[6] *Id.* at 70-73.

Complainant further averred that respondent judge violated the Code of Judicial Conduct when he personally brokered the settlement of the estate of the plaintiff and the issuance of new certificates of titles, and solicited by way of research fee, the amount of ₱350,000.00 of which respondent judge received the amount of ₱50,000.00.

On November 18, 2008, the OCA directed respondent judge to comment on the charges of Violation of Code of Judicial Ethics, Extortion, Grave Abuse of Judicial Discretion and Rendering an Unjust Interlocutory Order against him.[7]

In his Comment[8] dated December 19, 2008, Judge Cacatian denied having extorted money much less received the amount of ₱50,000.00 from complainant as downpayment for the supposed fixing of the titles of the properties. He further alleged that he could not have transacted with complainant since he did not know her personally. He claimed that he prohibited litigants from entering his chambers, thus, he could not have met complainant for purposes of carrying out the transaction being complained of. Atty. Norberto Obedoza, Branch Clerk of Court of the same court, corroborated Judge Cacatian's claim that it is the latter's policy to prohibit litigants from entering his chamber.

On August 3, 2009, the OCA recommended that the instant complaint against Judge Cacatian be dismissed for lack of merit and for being judicial in nature.[9]

On August 19, 2009, complainant submitted additional documentary evidence in support of the instant complaint against respondent judge, to wit: (1) Affidavit[10] of Roger P. Colobong; and (2) Affidavit[11] of Helen Grace E. Alamar. Both witnesses corroborated complainant's allegation that Judge Cacatian received ₱50,000.00 from her.

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[7] *Id.* at 75.

[8] *Id.* at 76-81.

[9] *Id.* at 198-203.

[10] *Id.* at 212-215.

[11] *Id.* at 207-211.

In a Resolution dated September 16, 2009, the Court adopted and approved the findings and recommendation of the OCA and dismissed the complaint against Judge Cacatian for lack of merit and for being judicial in nature.

However, in a letter dated November 23, 2009, complainant alleged that there were irregularitites in the handling of the complaint she filed against Judge Cacatian. She manifested that the additional affidavits she submitted were not considered by the Court in their Decision dated September 16, 2009.

In a Resolution[12] dated January 11, 2010, the Court resolved to treat complainant's letter dated November 23, 2009 as a motion for reconsideration of the Resolution dated September 16, 2009, and referred said motion to the OCA for evaluation, report and recommendation.

Subsequently, in a Memorandum[13] to Chief Justice Renato C. Corona dated April 26, 2010, the OCA, in the interest of substantial justice, recommended that complainant's motion for reconsideration of the Resolution dated September 16, 2009 be given due course, and be referred to an Associate Justice of the Court of Appeals for investigation, report and recommendation.

In the same Memorandum, the OCA likewise explained that the additional documents filed by complainant were actually received on time by the Court on August 24, 2009.

Thus, on July 26, 2010, the Court resolved to give due course to the motion for reconsideration of the Resolution dated September 16, 2009 and referred the same to an Associate Justice of the Court of Appeals for investigation, report and recommendation.

In his Report dated November 10, 2010, Associate Justice Michael P. Elbinias[14] found Judge Cacatian guilty of violating Rule 5.02 of the Code of Judicial Conduct and thus recommended that he be fined in the amount of ₱11,000.00.

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[12] *Id.* at 382-383.

[13] *Id.* at 384-387.

[14] Associate Justice of the Court of Appeals.

In the report, the allegations of extortion and knowingly rendering an unjust order or judgment were recommended to be dismissed due to insufficient evidence. However, for proposing or brokering to facilitate the transfer of titles of the properties of complainant's mother to complainant and her siblings, Judge Cacatian was found to be engaged in a commercial transaction that affected his appearance of impartiality, thus, violated Rule 5.02 of the Code of Judicial Conduct.

Likewise, the Investigating Justice observed during the hearing that, in contrast with Judge Cacatian's bare denial that he had a conference with complainant, complainant and her witness, Alamar, appeared candid and sincere in asserting that they have met Judge Cacatian. Atty. Obedoza also could not testify with certainty whether such conference took place, because he was manning two separate offices. Judge Cacatian also failed to present his wife to refute the allegation that she was also present during the alleged conference. Thus, the Investigating Justice surmised that it was possible that the alleged conference indeed took place.

We agree with the findings and recommendation of the Investigating Justice.

In this case, the allegation of extortion or unjust exaction of money was found to be baseless. Complainant failed to prove that Judge Cacatian demanded money from her in exchange for a favorable decision. In fact, the judgment in the subject case had long been final at the time when the alleged act of extortion transpired. There was no allegation or finding that respondent judge actually threatened to reverse the writ of execution if she cannot provide the subject money. As testified to by complainant, she and Judge Cacatian merely discussed and negotiated the transaction where Judge Cacatian through his wife, will facilitate the processing and transferring of the titles of the subject properties from complainant's mother to complainant and her siblings.

Indeed, an accusation of extortion is very easy to concoct and difficult to disprove. The proceedings in charges of this character are in their nature highly penal in character and are to be governed by the rules of law applicable to criminal cases. Thus, as in this

case, it must, therefore, be proven beyond reasonable doubt inasmuch as what is imputed against respondent judge connotes a misconduct so grave that, if proven, would entail dismissal from the bench. The quantum of proof required should be more than substantial. It will take more than mere pleadings and affidavits to lend an aura of respectability and credibility to complainant's accusation. A finding of guilt should come from the strength of the complainant's evidence and not from the weakness of the respondent judge's defense.[15] Complainant failed to satisfy this requirement.

Corollarily, the charge of knowingly rendering unjust judgment or order must also fail. To hold a judge liable for knowingly rendering an unjust judgment or order, it must be shown beyond reasonable doubt that the judgment or order is unjust and it was made with a conscious and deliberate effort to do an injustice.

If complainant felt prejudiced by the orders issued by respondent judge, the proper recourse is through judicial remedies, *i.e.*, to elevate the assailed decision or order to the higher court for review and correction. Disciplinary proceedings and criminal actions against magistrates do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned.[16] This, again, complainant failed to prove.

We reiterate that the ground for the removal of a judicial officer should be established beyond reasonable doubt. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption, incompetency, *etc.* The general rule in regard to admissibility in evidence in criminal trials apply.[17]

However, while respondent cannot be made liable for extortion, we nevertheless share the Investigating Justice's view that

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[15] See *Spouses Boyboy v. Atty. Yabut, Jr.*, 449 Phil. 664, 674-675 (2003).

[16] See *Carmen Edaño v. Judge Fatima G. Asdala*, Regional Trial Court, Branch 87, Quezon City, A.M. No. RTJ-06-2007, December 6, 2010.

[17] *Ang v. Judge Asis*, 424 Phil. 105, 116 (2002).

respondent judge is guilty of violating Canon 5, Rule 5.02 of the Code of Judicial Conduct for his act of transacting with complainant in facilitating the transfer of the titles of the properties from complainant's mother to complainant and her siblings during the conference in respondent judge's chamber.

Canon 5, Rule 5.02 of the Code of Judicial Conduct, provides:

> A judge shall refrain from financial or business dealings that tend to reflect adversely on the court's partiality, interfere with the proper performance of judicial activities, or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving ground for disqualification.

In the instant case, Judge Cacatian, in proposing to facilitate the transfer of titles of the properties, in effect engaged in a commercial transaction that gave him an appearance of impropriety. In *Agustin v. Mercado*,[18] We declared that employees of the court should have no business meeting with litigants or their representatives under any circumstance. This prohibition is more compelling when it involves a judge who, because of his position, must strictly adhere to the highest tenets of judicial conduct; a judge must be the embodiment of competence, integrity and independence. As we explained in *Yu-Asensi v. Judge Villanueva*:[19]

> x x x.[W]ithin the hierarchy of courts, trial courts stand as an important and visible symbol of government especially considering that as opposed to appellate courts, trial judges are those directly in contact with the parties, their counsel and the communities which the Judiciary is bound to serve. Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, a judge must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. x x x it is essential that judges, like *Caesar's* wife, should be above suspicion.[20]

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[18] A.M. No. P-07-2340, July 26, 2007, 528 SCRA 203, 209.

[19] 379 Phil. 258 (2000).

[20] *Id.* at 271-272.

The Code does not qualify the prohibition. The intent of the rule is to limit a judge's involvement in the affairs and interests of private individuals to minimize the risk of conflict with his judicial duties and to allow him to devote his undivided attention to the performance of his official functions.[21]

Needless to say, the Code of Judicial Conduct has the force and effect of law. The Code itself provides that judges are enjoined to strictly comply with its provisions. Otherwise, a judge may arrogate upon himself the discretion of determining when he may or may not act in a fiduciary capacity.[22]

Under Section 11 (B), in relation to Section 9 (4) of Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, violation of Supreme Court rules constitutes a less serious charge punishable by any of the following sanctions:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00, but not exceeding ₱20,000.00.

WHEREFORE, *JUDGE EFREN M. CACATIAN,* Presiding Judge, Branch 35, Regional Trial Court, Santiago City, Isabela, is found *GUILTY* of violation of Canon 5.02 of the Code of Judicial Conduct and, considering this to be his first offense, is hereby *FINED* in the amount of ₱11,000.00, with a stern *WARNING* that a repetition of a similar infraction will be sanctioned more severely.

SO ORDERED.

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

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[21] *Ramos v. Judge Barot,* 465 Phil. 347, 354 (2004).

[22] *Id.*

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 978, dated March 30, 2011.

THIRD DIVISION

[G.R. No. 156684. April 6, 2011]

SPOUSES ANTONIO and FE YUSAY, *petitioners, vs.* **COURT OF APPEALS, CITY MAYOR and CITY COUNCIL OF MANDALUYONG CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES TO PROSPER.— For *certiorari* to prosper, therefore, the petitioner must allege and establish the concurrence of the following requisites, namely: (*a*) The writ is directed against a tribunal, board, or officer *exercising judicial or quasi-judicial functions*; (*b*) Such tribunal, board, or officer has acted *without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction*; and (*c*) There is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

2. ID.; ID.; ID.; ID.; JUDICIAL FUNCTION, DEFINED.— The first requisite is that the respondent tribunal, board, or officer must be exercising judicial or quasi-judicial functions. Judicial function, according to Bouvier, is the exercise of the judicial faculty or office; it also means the capacity to act in a specific way which appertains to the judicial power, as one of the powers of government. "The term," Bouvier continues, "is used to describe generally those modes of action which appertain to the judiciary as a department of organized government, and through and by means of which it accomplishes its purpose and exercises its peculiar powers."

3. ID.; ID.; ID.; ID.; *CERTIORARI* DOES NOT LIE AGAINST THE *SANGGUNIANG PANGLUNSOD*.— *[C]ertiorari* did not lie against the *Sangguniang Panglungsod*, which was not a part of the Judiciary settling an actual controversy involving legally demandable and enforceable rights when it adopted Resolution No. 552, but a legislative and policy-making body declaring its sentiment or opinion. Nor did the *Sangguniang Panglungsod* abuse its discretion in adopting Resolution

No. 552. To demonstrate the absence of abuse of discretion, it is well to differentiate between a resolution and an ordinance. The first is upon a specific matter of a temporary nature while the latter is a law that is permanent in character. No rights can be conferred by and be inferred from a resolution, which is nothing but an embodiment of what the lawmaking body has to say in the light of attendant circumstances. In simply expressing its sentiment or opinion through the resolution, therefore, the *Sangguniang Panglungsod* in no way abused its discretion, least of all gravely, for its expression of sentiment or opinion was a constitutionally protected right.

4. POLITICAL LAW; LOCAL GOVERNMENT CODE; REQUIRES A CITY TO PASS A PROPER ORDINANCE TO INITIATE AN EXPROPRIATION PROCEEDING.— Republic Act No. 7160 (*The Local Government Code*) required the City to pass an ordinance, not adopt a resolution, for the purpose of initiating an expropriation proceeding. x x x A resolution like Resolution No. 552 that merely expresses the sentiment of the *Sangguniang Panglungsod* is not sufficient for the purpose of initiating an expropriation proceeding.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; CONCEPT.— The function of prohibition is to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice. The writ of prohibition is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy and adequate remedy in the ordinary course of law. For grave abuse of discretion to be a ground for prohibition, the petitioner must first demonstrate that the tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions, has exercised its or his power in an arbitrary or despotic manner, by reason of passion or personal hostility, which must be so patent and gross as would amount to an evasion, or to a virtual refusal to perform the duty enjoined or to act in contemplation of law. On the other hand, the term *excess of jurisdiction* signifies that the court, board, or officer has jurisdiction over a case but has transcended such jurisdiction or acted without any authority. The petitioner must further allege in the petition and establish facts to show that

any other existing remedy is not speedy or adequate. A remedy is plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the tribunal or inferior court.

6. ID.; ID.; ID.; PROHIBITION DOES NOT LIE AGAINST EXPROPRIATION; INSTANCES WHERE THE REMEDY OF PROHIBITION BECOME AVAILABLE.— The rule and relevant jurisprudence indicate that prohibition was not available to the petitioners as a remedy against the adoption of Resolution No. 552, for the *Sangguniang Panglungsod*, by such adoption, was not exercising judicial, quasi-judicial or ministerial functions, but only expressing its collective sentiment or opinion. Verily, there can be no prohibition against a procedure whereby the immediate possession of the land under expropriation proceedings may be taken, provided always that due provision is made to secure the prompt adjudication and payment of just compensation to the owner. This bar against prohibition comes from the nature of the power of eminent domain as necessitating the taking of private land intended for public use, and the interest of the affected landowner is thus made subordinate to the power of the State. Once the State decides to exercise its power of eminent domain, the power of judicial review becomes limited in scope, and the courts will be left to determine the appropriate amount of just compensation to be paid to the affected landowners. Only when the landowners are not given their just compensation for the taking of their property or when there has been no agreement on the amount of just compensation may the remedy of prohibition become available.

APPEARANCES OF COUNSEL

Luis Sementilla, Jr. for petitioners.
City Legal Officer (Mandaluyong) for respondents.

R E S O L U T I O N

BERSAMIN, *J.*:

The petitioners appeal the adverse decision promulgated on October 18, 2002[1] and resolution promulgated on January 17, 2003,[2] whereby the Court of Appeals (CA) reversed and set aside the order issued in their favor on February 19, 2002 by the Regional Trial Court, Branch 214, in Mandaluyong City (RTC).[3] Thereby, the CA upheld Resolution No. 552, Series of 1997, adopted by the City of Mandaluyong (City) authorizing its then City Mayor to take the necessary legal steps for the expropriation of the parcel of land registered in the names of the petitioners.

We affirm the CA.

Antecedents

The petitioners owned a parcel of land with an area of 1,044 square meters situated between Nueve de Febrero Street and Fernandez Street in Barangay Mauway, Mandaluyong City. Half of their land they used as their residence, and the rest they rented out to nine other families. Allegedly, the land was their only property and only source of income.

On October 2, 1997, the *Sangguniang Panglungsod* of Mandaluyong City adopted Resolution No. 552, Series of 1997, to authorize then City Mayor Benjamin S. Abalos, Sr. to take the necessary legal steps for the expropriation of the land of the petitioners for the purpose of developing it for low cost housing for the less privileged but deserving city inhabitants. The resolution reads as follows:

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[1] *Rollo*, pp. 109-116; penned by Associate Justice Eliezer R. De los Santos (retired/deceased), with Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Danilo B. Pine (retired), concurring.

[2] *Id.*, p. 136.

[3] *Id.*, pp. 79-81.

RESOLUTION NO. 552, S-1997[4]

RESOLUTION AUTHORIZING HON. BENJAMIN S. ABALOS TO TAKE THE NECESSARY LEGAL STEPS FOR THE EXPROPRIATION OF A PARCEL OF LAND SITUATED ALONG DR. JOSE FERNANDEZ STREET, BARANGAY MAUWAY, CITY OF MANDALUYONG, OWNED BY MR. ANTONIO YUSAY

WHEREAS, there is a parcel of land situated along Dr. Jose Fernandez Street, Barangay Mauway, City of Mandaluyong, owned and registered in the name of MR. ANTONIO YUSAY;

WHEREAS, this piece of land have been occupied for about ten (10) years by many financially hard-up families which the City Government of Mandaluyong desires, among other things, to provide modest and decent dwelling;

WHEREAS, the said families have already negotiated to acquire this land but was refused by the above-named owner in total disregard to the City Government's effort of providing land for the landless;

WHEREAS, the expropriation of said land would certainly benefit public interest, let alone, a step towards the implementation of social justice and urban land reform in this City;

WHEREAS, under the present situation, the City Council deems it necessary to authorize Hon. Mayor BENJAMIN S. ABALOS to institute expropriation proceedings to achieve the noble purpose of the City Government of Mandaluyong.

NOW, THEREFORE, upon motion duly seconded, the City Council of Mandaluyong, in session assembled, RESOLVED, as it hereby RESOLVES, to authorize, as it is hereby authorizing, Hon. Mayor BENJAMIN S. ABALOS, to institute expropriation proceedings against the above-named registered owner of that parcel of land situated along Dr. Jose Fernandez Street, Barangay Mauway, City of Mandaluyong, (f)or the purpose of developing it to a low-cost housing project for the less privileged but deserving constituents of this City.

ADOPTED on this 2nd day of October 1997 at the City of Mandaluyong.

Sgd. Adventor R. Delos Santos
Acting Sanggunian Secretary

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[4] *Id.*, p. 32

Attested:	Approved:
Sgd. Roberto J. Francisco City Councilor & Acting Presiding Officer	Sgd. Benjamin S. Abalos City Mayor

Notwithstanding that the enactment of Resolution No. 552 was but the initial step in the City's exercise of its power of eminent domain granted under Section 19 of the *Local Government Code of 1991*, the petitioners became alarmed, and filed a petition for *certiorari* and prohibition in the RTC, praying for the annulment of Resolution No. 552 due to its being unconstitutional, confiscatory, improper, and without force and effect.

The City countered that Resolution No. 552 was a mere authorization given to the City Mayor to initiate the legal steps towards expropriation, which included making a definite offer to purchase the property of the petitioners; hence, the suit of the petitioners was premature.

On January 31, 2001, the RTC ruled in favor of the City and dismissed the petition for lack of merit, opining that *certiorari* did not lie against a legislative act of the City Government, because the special civil action of *certiorari* was only available to assail judicial or quasi-judicial acts done without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; that the special civil action of prohibition did not also lie under the circumstances considering that the act of passing the resolution was not a judicial, or quasi-judicial, or ministerial act; and that notwithstanding the issuance of Resolution No. 552, the City had yet to commit acts of encroachment, excess, or usurpation, or had yet to act without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction.

However, on February 19, 2002, the RTC, acting upon the petitioners' motion for reconsideration, set aside its decision and declared that Resolution No. 552 was null and void. The RTC held that the petition was not premature because the passage of Resolution No. 552 would already pave the way

for the City to deprive the petitioners and their heirs of their only property; that there was no due process in the passage of Resolution No. 552 because the petitioners had not been invited to the subsequent hearings on the resolution to enable them to ventilate their opposition; and that the purpose for the expropriation was not for public use and the expropriation would not benefit the greater number of inhabitants.

Aggrieved, the City appealed to the CA.

In its decision promulgated on October 18, 2002, the CA concluded that the reversal of the January 31, 2001 decision by the RTC was not justified because Resolution No. 552 deserved to be accorded the benefit of the presumption of regularity and validity absent any sufficient showing to the contrary; that notice to the petitioners (Spouses Yusay) of the succeeding hearings conducted by the City was not a part of due process, for it was enough that their views had been consulted and that they had been given the full opportunity to voice their protest; that to rule otherwise would be to give every affected resident effective veto powers in law-making by a local government unit; and that a public hearing, although necessary at times, was not indispensable and merely aided in law-making.

The CA disposed as follows:

> WHEREFORE, premises considered, the questioned order of the Regional Trial Court, Branch 214, Mandaluyong City dated February 19, 2002 in SCA Case No. 15-MD, which declared Resolution No. 552, Series of 1997 of the City of Mandaluyong null and void, is hereby REVERSED and SET ASIDE. No costs.
>
> SO ORDERED.[5]

The petitioners moved for reconsideration, but the CA denied their motion. Thus, they appeal to the Court, posing the following issues, namely:

1. Can the validity of Resolution No. 552 be assailed even before its implementation?

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[5] *Id.,* p. 115.

2. Must a citizen await the takeover and possession of his property by the local government before he can go to court to nullify an unjust expropriation?

Before resolving these issues, however, the Court considers it necessary to first determine whether or not the action for *certiorari* and prohibition commenced by the petitioners in the RTC was a proper recourse of the petitioners.

Ruling

We deny the petition for review, and find that *certiorari* and prohibition were not available to the petitioners under the circumstances. Thus, we sustain, albeit upon different grounds, the result announced by the CA, and declare that the RTC gravely erred in giving due course to the petition for *certiorari* and prohibition.

1.
***Certiorari* does not lie to assail the issuance of a resolution by the Sanggunian Panglungsod**

The special civil action for *certiorari* is governed by Rule 65 of the *1997 Rules of Civil Procedure*, whose Section 1 provides:

> Section 1. Petition for *certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> x x x x x x x x x

For *certiorari* to prosper, therefore, the petitioner must allege and establish the concurrence of the following requisites, namely:

(*a*) The writ is directed against a tribunal, board, or officer *exercising judicial or quasi-judicial functions*;

(*b*) Such tribunal, board, or officer has acted *without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction*; and

(*c*) There is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[6]

It is further emphasized that a petition for *certiorari* seeks solely to correct defects in jurisdiction,[7] and does not correct just any error or mistake committed by a court, board, or officer exercising judicial or quasi-judicial functions unless such court, board, or officer thereby acts without jurisdiction or in excess of jurisdiction or with such grave abuse of discretion amounting to lack of jurisdiction.[8]

The first requisite is that the respondent tribunal, board, or officer must be exercising judicial or quasi-judicial functions. Judicial function, according to Bouvier,[9] is the exercise of the judicial faculty or office; it also means the capacity to act in a specific way which appertains to the judicial power, as one of the powers of government. "The term," Bouvier continues,[10] "is used to describe generally those modes of action which appertain to the judiciary as a department of organized government, and through and by means of which it accomplishes its purpose and exercises its peculiar powers."

Based on the foregoing, *certiorari* did not lie against the *Sangguniang Panglungsod*, which was not a part of the Judiciary settling an actual controversy involving legally demandable and enforceable rights when it adopted Resolution No. 552,

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[6] *Delos Santos v. Court of Appeals*, G.R. No. 169498, December 11, 2008, 573 SCRA 691, 700; *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 133.

[7] *Republic v. Yang Chi Hao*, G.R. No. 165332, October 2, 2009, 602 SCRA 220, 221 citing *Herrera v. Barrett*, 25 Phil. 245, 271 (1913).

[8] *Chua v. Court of Appeals*, G.R. No. 112948, April 18, 1997, 271 SCRA 546, 553.

[9] Bouvier's *Law Dictionary*, Eighth Edition (Rawle's Revision, 1914); a similar definition is found in Black's *Law Dictionary*, Sixth Edition.

[10] *Ibid.*

but a legislative and policy-making body declaring its sentiment or opinion.

Nor did the *Sangguniang Panglungsod* abuse its discretion in adopting Resolution No. 552. To demonstrate the absence of abuse of discretion, it is well to differentiate between a resolution and an ordinance. The first is upon a specific matter of a temporary nature while the latter is a law that is permanent in character.[11] No rights can be conferred by and be inferred from a resolution, which is nothing but an embodiment of what the lawmaking body has to say in the light of attendant circumstances. In simply expressing its sentiment or opinion through the resolution, therefore, the *Sangguniang Panglungsod* in no way abused its discretion, least of all gravely, for its expression of sentiment or opinion was a constitutionally protected right.

Moreover, Republic Act No. 7160 (*The Local Government Code*) required the City to pass an ordinance, not adopt a resolution, for the purpose of initiating an expropriation proceeding. In this regard, Section 19 of *The Local Government Code* clearly provides, *viz*:

> Section 19. *Eminent Domain*. – A local government unit may, through its chief executive and **acting pursuant to an ordinance**, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

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[11] *Beluso v. The Municipality of Panay (Capiz)*, G.R. No. 153974, August 7, 2006, 498 SCRA 113.

A resolution like Resolution No. 552 that merely expresses the sentiment of the *Sangguniang Panglungsod* is not sufficient for the purpose of initiating an expropriation proceeding. Indeed, in *Municipality of Parañaque v. V.M. Realty Corporation*,[12] a case in which the Municipality of Parañaque based its complaint for expropriation on a resolution, not an ordinance, the Court ruled so:

> The power of eminent domain is lodged in the legislative branch of government, which may delegate the exercise thereof to LGUs, other public entities and public utilities. An LGU may therefore exercise the power to expropriate private property only when authorized by Congress and subject to the latter's control and restraints, imposed "through the law conferring the power or in other legislations." In this case, Section 19 of RA 7160, which delegates to LGUs the power of eminent domain, also lays down the parameters for its exercise. It provides as follows:
>
> > "Section 19. Eminent Domain. A local government unit may, through its chief executive and acting **pursuant to an ordinance**, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property." (Emphasis supplied)
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> Thus, the following essential requisites must concur before an LGU can exercise the power of eminent domain:

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[12] G.R. No. 127820, July 20, 1998, 292 SCRA 678, 687; see also *Heirs of Alberto Suguitan v. City of Mandaluyong*, G.R. No. 135087, March 14, 2000, 328 SCRA 137.

1. **An ordinance is enacted by the local legislative council** authorizing the local chief executive, in behalf of the LGU, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.

2. The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.

3. There is payment of just compensation, as required under Section 9 Article III of the Constitution and other pertinent laws.

4. A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

In the case at bar, the local chief executive sought to exercise the power of eminent domain pursuant to a resolution of the municipal council. Thus, there was no compliance with the first requisite that the mayor be authorized through an ordinance. Petitioner cites *Camarines Sur vs. Court of Appeals* to show that a resolution may suffice to support the exercise of eminent domain by an LGU. This case, however, is not in point because the applicable law at that time was BP 337, the previous Local Government Code, which had provided that a mere resolution would enable an LGU to exercise eminent domain. In contrast, **RA 7160, the present Local Government Code which was already in force when the Complaint for expropriation was filed, explicitly required an ordinance for this purpose.**

We are not convinced by petitioner's insistence that the terms "resolution" and "ordinance" are synonymous. **A municipal ordinance is different from a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature. Additionally, the two are enacted differently — a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a majority of all the Sanggunian members.**

If Congress intended to allow LGUs to exercise eminent domain through a mere resolution, it would have simply adopted the language of the previous Local Government Code. But Congress did not. In a clear divergence from the previous Local Government Code,

Section 19 of RA 7160 categorically requires that the local chief executive act pursuant to an ordinance. Indeed, "[l]egislative intent is determined principally from the language of a statute. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice." In the instant case, there is no reason to depart from this rule, since the law requiring an ordinance is not at all impossible, absurd, or unjust.

Moreover, the power of eminent domain necessarily involves a derogation of a fundamental or private right of the people. Accordingly, the manifest change in the legislative language – from "resolution" under BP 337 to "ordinance" under RA 7160 – demands a strict construction. "No species of property is held by individuals with greater tenacity, and is guarded by the Constitution and laws more sedulously, than the right to the freehold of inhabitants. When the legislature interferes with that right and, for greater public purposes, appropriates the land of an individual without his consent, the plain meaning of the law should not be enlarged by doubtful interpretation."

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In its Brief filed before Respondent Court, petitioner argues that its Sangguniang Bayan passed an ordinance on October 11, 1994 which reiterated its Resolution No. 93-35, Series of 1993, and ratified all the acts of its mayor regarding the subject expropriation.

This argument is bereft of merit. In the first place, petitioner merely alleged the existence of such an ordinance, but it did not present any certified true copy thereof. In the second place, petitioner did not raise this point before this Court. In fact, it was mentioned by private respondent, and only in passing. In any event, this allegation does not cure the inherent defect of petitioner's Complaint for expropriation filed on September 23, 1993. It is hornbook doctrine that:

> " x x x in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted before the court for determination is the sufficiency of the allegations in the complaint itself. Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer of the complaint?"

The fact that there is no cause of action is evident from the face of the Complaint for expropriation which was based on a mere resolution. The absence of an ordinance authorizing the same is equivalent to lack of cause of action. Consequently, the Court of Appeals committed no reversible error in affirming the trial court's Decision which dismissed the expropriation suit.[13] (Emphasis supplied)

In view of the absence of the proper expropriation ordinance authorizing and providing for the expropriation, the petition for *certiorari* filed in the RTC was dismissible for lack of cause of action.

2.
Prohibition does not lie against expropriation

The special civil action for prohibition is governed also by Section 2 of Rule 65 of the 1997 *Rules of Civil Procedure*, which states:

Section 2. *Petition for prohibition*. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

x x x x x x x x x

The function of prohibition is to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice.[14] The writ of prohibition

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[13] *Id.*, pp. 687-692.

[14] *Magallanes v. Sarita*, G.R. No. L-22092, October 29, 1966, 18 SCRA 575; *Tan v. Court of Appeals*, G.R. No. 164966, June 8, 2007, 524 SCRA 307, 314; *Vergara v. Rugue*, G.R. No. L-32984, August 26, 1977, 78 SCRA

is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy and adequate remedy in the ordinary course of law.[15] For grave abuse of discretion to be a ground for prohibition, the petitioner must first demonstrate that the tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions, has exercised its or his power in an arbitrary or despotic manner, by reason of passion or personal hostility, which must be so patent and gross as would amount to an evasion, or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[16] On the other hand, the term *excess of jurisdiction* signifies that the court, board, or officer has jurisdiction over a case but has transcended such jurisdiction or acted without any authority.[17]

The petitioner must further allege in the petition and establish facts to show that any other existing remedy is not speedy or adequate.[18] A remedy is plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the tribunal or inferior court.[19]

The rule and relevant jurisprudence indicate that prohibition was not available to the petitioners as a remedy against the adoption of Resolution No. 552, for the *Sangguniang Panglungsod*, by such adoption, was not exercising judicial, quasi-judicial or ministerial functions, but only expressing its collective sentiment or opinion.

312, 323; *Lopez v. City Judge*, G.R. No. L-25795, October 29, 1966, 18 SCRA 616, 621-622; *Navarro v. Lardizabal*, G.R. No. L-22581, May 21, 1969, 25 SCRA 370.

[15] *Commissioner of Immigration v. Go Tieng*, 28 SCRA 237.

[16] *Solidum v. Hernandez*, G.R. No. L-16570, February 28, 1963, 7 SCRA 320, 325; *Apurillo v. Garciano*, G.R. No. L-23683, July 30, 1969, 28 SCRA 1054.

[17] *Solidum v. Hernandez, supra*.

[18] *Lee v. People*, G.R. No. 159288, October 19, 2004, 440 SCRA 662, 677.

[19] *Lee v. People*, G.R. No. 159288, October 19, 2004, 440 SCRA 662, 678.

Verily, there can be no prohibition against a procedure whereby the immediate possession of the land under expropriation proceedings may be taken, provided always that due provision is made to secure the prompt adjudication and payment of just compensation to the owner. [20] This bar against prohibition comes from the nature of the power of eminent domain as necessitating the taking of private land intended for public use,[21] and the interest of the affected landowner is thus made subordinate to the power of the State. Once the State decides to exercise its power of eminent domain, the power of judicial review becomes limited in scope, and the courts will be left to determine the appropriate amount of just compensation to be paid to the affected landowners. Only when the landowners are not given their just compensation for the taking of their property or when there has been no agreement on the amount of just compensation may the remedy of prohibition become available.

Here, however, the remedy of prohibition was not called for, considering that only a resolution expressing the desire of the *Sangguniang Panglungsod* to expropriate the petitioners' property was issued. As of then, it was premature for the petitioners to mount *any* judicial challenge, for the power of eminent domain could be exercised by the City only through the filing of a verified complaint in the proper court.[22] Before the City as the expropriating authority filed such verified complaint, no expropriation proceeding could be said to exist. Until then, the petitioners as the owners could not also be deprived of their property under the power of eminent domain.[23]

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[20] *Robern Development Corporation v. Quitain*, G.R. No. 135042, September 23, 1999, 315 SCRA 150; *Manila Railroad Company v. Paredes*, 31 Phil. 118, 135 (1915).

[21] *Republic v. Mangotara*, G.R. No. 170375, July 7, 2010, 624 SCRA 360, 422.

[22] Section 1, Rule 67, *Rules of Court*.

[23] *Greater Balanga Development Corporation v. Municipality of Balanga, Bataan*, G.R. No. 83987, December 27, 1994, 239 SCRA 436, 444.

WHEREFORE, we affirm the decision promulgated on October 18, 2002 in CA-G.R. SP No. 70618.

Costs to be paid by the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 161204. April 6, 2011]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **Hon. VICENTE Q. ROXAS, (Presiding Judge of Regional Trial Court, Quezon City, Branch 227), REGISTER OF DEEDS OF QUEZON CITY, LAND REGISTRATION AUTHORITY, OFFICE OF THE CITY PROSECUTOR OF QUEZON CITY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FAILURE TO ACCOMPANY THE PETITION WITH A CERTIFIED TRUE COPY OF THE JUDGMENT AND OTHER PERTINENT DOCUMENTS IS FATAL; EFFECT.— Anent whether the CA correctly dismissed NHA's petition for *certiorari*, the Court stresses that NHA, as the petitioner, had the obligation to comply with the basic requirements for the filing of a petition for *certiorari* prescribed in Rule 65 of the *Rules of Court*, specifically to accompany the petition with a "certified true copy of the judgment, order or resolution subject thereof, copies of all

pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46." x x x However, as the CA's resolution of September 7, 2001 revealed, NHA did not attach "the petition for reconstitution filed with the trial Court and other resolutions or orders of the court before its dismissal of the petition, documents which are considered relevant and pertinent thereto." The omission was fatal to the petition for *certiorari* of NHA. Section 3, Rule 46, of the *Rules of Court, supra,* expressly provides that: "*The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.*" Dismissal of the petition was the recourse of the CA, because the requirements imposed by the *Rules of Court* were not to be lightly treated or disregarded due to the omitted documents being essential in a special civil action for *certiorari*, a proceeding by which a superior court determines whether the respondent court or judge acted without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

2. ID; APPEALS; FILING OF A MOTION FOR RECONSIDERATION INTERRUPTS THE RUNNING OF THE PERIOD OF APPEAL; APPLICATION.— At the time the RTC issued its resolution denying due course to NHA's notice of appeal on July 24, 2001, the applicable rule was Section 3 of Rule 41 of the *Rules of Court*, which stated that the period for taking an ordinary appeal is *within* 15 days from notice of the judgment or final order appealed from. The filing of a motion for new trial or reconsideration interrupted the running of the period of appeal, which began to run again from the movant's receipt of notice of the order denying the motion. Thus, NHA had only the balance of the period within which to perfect an appeal, the balance being the number of days remaining in its reglementary period after deducting the time during which the motion was pending, that is, from the date it filed the motion for reconsideration to the date it received the notice of denial of its motion for reconsideration. Considering that NHA filed its motion for reconsideration on the last day of the reglementary period, its appeal must be brought within the day following the service to it of the order denying its motion for reconsideration. Under the circumstances, NHA's notice of appeal was undeniably filed out of time.

3. ID.; ACTIONS; WHERE REFILING OF A PETITION FOR RECONSTITUTION IS ALLOWED DESPITE DISMISSAL THEREOF BY THE TRIAL COURT WITH PREJUDICE.— We declare, however, that the RTC's dismissal of NHA's petition for reconstitution, albeit *with prejudice*, does not bar NHA from filing another petition for reconstitution. The RTC's express barring of NHA's right to refile its petition for reconstitution emanated more from judicial disapproval of NHA's mishandling of the petition than from any other reason. Yet, the bar was not insuperable, considering that the stated reason of thereby preventing NHA's possible forum shopping was unnecessary. The venue for a new petition for reconstitution would still be Quezon City due to the parcels of land covered by TCT No. 1356 being located entirely within Quezon City. As such, the RTC in Quezon City remained as the proper court for a refiled petition for reconstitution. Moreover, considering that at the time the orders of dismissal were issued NHA had not yet established the facts essential for the RTC to proceed on its petition for reconstitution, the RTC's dismissal did not amount to an adjudication on the merits of the petition and was thus not a viable basis for a bar by *res judicata*.

APPEARANCES OF COUNSEL

The Solicitor General and *Chief Corporate Attorney (NHA)* for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

Petitioner National Housing Authority (NHA) appeals the resolution promulgated on September 7, 2001 (dismissing its petition for *certiorari* "for failure to comply with Sec. 1, Rule 65 of the 1997 Rules of Civil Procedure")[1] and the resolution

[1] *Rollo*, pp. 32-33; penned by Associate Justice Presbitero J. Velasco, Jr. (later Court Administrator, now Member of the Court), with Associate Justice Ruben T. Reyes (later Presiding Justice of the CA and Member of the Court, but now retired) and Associate Justice Juan Q. Enriquez, Jr., concurring.

promulgated on October 27, 2003 (denying its motion for reconsideration for lack of merit),[2] both issued in C.A.-G.R. No. SP No. 66409 entitled *National Housing Authority v. Hon. Vicente Q. Roxas, et al.*, a special civil action for *certiorari*.

Antecedents

People's Homesite and Housing Corporation (PHHC), NHA's predecessor,[3] was the registered owner of two large parcels of land situated in the then Municipality of San Juan Del Monte, Province of Rizal, but now a part of Quezon City (QC), covered by Transfer Certificate of Title (TCT) No. 1356 of the QC Register of Deeds (QCRD), with an estimated area of 386,732.40 square meters and 15,555,534.60 square meters. The parcels of land, which encompassed almost the entire area of the Diliman Estate, comprised various subdivisions like Project 1, Project 2, Project 3, Project 4, Project 6, Project 7, North Bago-Bantay, U.P Village, Barangay Central, Sikatuna Village, Barangay Pinahan, Barangay South Triangle, West Triangle, Barangay Sacred Heart, and other Barangays found inside the Diliman Estate. TCT No. 1356 was subdivided into 17,387 lots, more or less, under several survey plans. The subdivided lots were sold and disposed off to NHA's beneficiaries/lot buyers. Of the 17,387 subdivided lots, only 389 lots either remained undisposed or the sales contracts covering them had been executed by the PHHC or NHA in favor of the beneficiaries but the corresponding individual TCTs were yet to issue.

In 1987, NHA delivered its owner's copy of TCT No. 1356 to the QCRD to facilitate the numerous partial cancellations of TCT No. 1356 on account of the deeds of sale executed by NHA in favor of the beneficiaries. However, on June 11, 1988, fire razed the entire premises of QCRD and destroyed the original and the owner's duplicate copies of TCT No. 1356, along with many other records and documents then in the possession and custody of QCRD.

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[2] *Id.*, pp. 34-35; penned by Associate Justice Reyes, with Associate Justice Enriquez, Jr. and Associate Justice Amelita G. Tolentino, concurring.

[3] By virtue of P.D. No. 757, NHA succeeded PHHC.

On March 12, 1999, NHA filed a petition for the reconstitution of TCT No. 1356 in the Regional Trial Court in Quezon City (RTC). Its petition, docketed as LRC Case No. Q-99-11347, was raffled to Branch 227 of the RTC, presided by respondent Judge Vicente Q. Roxas.

NHA attached to its petition documents to prove its ownership and the identity of the lands involved, namely: (*a*) photocopy of the technical description of the parcels of land covered by TCT No. 1356 issued by the Lands Management Bureau of the Department of Environment and Natural Resources; (*b*) Subdivision Plan No. BSD 7365; (*c*) photocopy of a certification issued by QCRD to the effect that TCT No. 1356 was among the certificates of title destroyed by fire on June 11, 1988; (*d*) photocopy of TCT No. 1356 filed with NHA's Estate Management Title Custodian; and (*e*) list of the remaining 389 lots, identified by lot and block numbers, their respective areas, survey plan numbers, and their adjoining and adjacent properties.

The RTC set the petition for initial hearing on April 13, 1999 and directed NHA to submit twelve copies of the petition, certified true copies or originals of the annexes, certified true copies of tax declarations and tax receipts, and other jurisdictional requirements as provided by law.

NHA failed to comply with the directive and to appear at the initial hearing. Thus, on April 13, 1999, the RTC issued an order archiving LRC Case No. Q-99-11347 until compliance by NHA with the jurisdictional requirements.

On December 27, 2000, the RTC issued a resolution denying the NHA's petition for reconstitution for lack of merit, *viz*:

RESOLUTION

The petitioner herein has failed to comply with jurisdictional requirements continuously despite several opportunities afforded petition.

This case has been Archived since April 13, 1999.

WHEREFORE, premises considered, the application of petition[er] for reconstitution is hereby DENIED for lack of merit.

No petition for Reconstitution can be filed from hereon with any other court for TCT No. 1356 – this Court having exercised exclusive jurisdiction over the same in this Land Registration Case.

SO ORDERED.[4]

NHA sought reconsideration, explaining that it was ready and very much willing to comply with all of the requirements except for the certified true copies of the tax declarations and tax receipts that the Assessor's Office of Quezon City had not yet completed because of the voluminous documents involving the hundreds of hectares covered by TCT No. 1356. The RTC set NHA's motion for reconsideration for hearing on May 8, 2001 and directed NHA to comply with the legal requirements in order to show its good faith.[5]

In compliance, NHA submitted twelve copies of its petition for reconstitution (with annexes and original copies of the tax declarations covering 31 subdivided lots in the Malaya/East Subdivision, Bago-Bantay and Kamuning); and a letter from the QC Assessor's Office informing NHA of the failure to accede to NHA's request for the tax declarations and tax receipts.[6] At the RTC's order, NHA filed its memorandum, to which it attached a certified true copy of a photocopy of TCT No. 1356.

Nonetheless, the RTC issued two orders on May 30, 2001[7] and June 29, 2001[8] denying NHA's motion for reconsideration for lack of merit. Both order are respectively reproduced as follows:

ORDER

Petitioner's failure to present any additional documents on Motion for Reconsideration in compliance with jurisdictional requirements a few of which were directed to be complied with, as

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[4] *Record,* p. 48.

[5] *Id.,* p. 58.

[6] *Id.,* p. 174.

[7] *Id.,* p. 175.

[8] *Id.,* p. 198.

stated in the March 17, 1999 Order of this Court shows that the Motion For Reconsideration is without merit. This Petition has been pending for a long time now with petitioner having been given many years to comply.

WHEREFORE, premises considered, Motion For Reconsideration of Petitioner is hereby DENIED for lack of merit.

Pursuant to Section 15 of Republic Act No. 26, "dismissal shall not preclude the right of the party or parties entitled thereof to file an application for confirmation of his or their title under the provision of the Land Registration Act," but the issue of Reconstitution is final and bars any registered owner or interested person from filing a case for reconstitution with any other Court as to constitute forum shopping.

SO ORDERED.

ORDER

With the denial of the Motion for Reconsideration of petitioner, Reconstitution as course of action is now barred. What petitioner must do now is to file an action for confirmation of title under the provisions of the Land Registration Act Sec. 15 RA 26.

SO ORDERED.

NHA filed a notice of appeal seeking to elevate the dismissal for review by the CA. However, the RTC dismissed the appeal, pointing out that NHA had only a day left within which to file its notice of appeal due to NHA's having filed its motion for reconsideration that interrupted the running of the period for appeal on the fourteenth day; that the balance of one day expired on June 21, 2001 because NHA had received the denial of its motion for reconsideration on June 20, 2001; and that the filing of the notice of appeal on July 4, 2001 and the payment of the appellate court docket fees only on July 5, 2001 were made way past the June 21, 2001 deadline to perfect its appeal.

Aggrieved, NHA filed a petition for *certiorari* in the CA (C.A.-G.R. No. SP No. 66409), ascribing grave abuse of discretion to the RTC for dismissing its notice of appeal.

As earlier stated, the CA summarily dismissed the petition for *certiorari* because of the failure of NHA to attach to the petition the certified true copies of all the relevant pleadings and documents.

After NHA's motion for reconsideration was denied upon the additional ground that NHA's notice of appeal had been filed out of time in the RTC, NHA now appeals.

Issues

In this appeal, NHA insists that the CA erred:

1. In dismissing NHA's petition for *certiorari* on technical grounds;
2. In not considering that the RTC's dismissal with prejudice of NHA's petition for reconstitution was made with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its comment, the Office of the Solicitor General (OSG) conceded that the dismissal of the petition for reconstitution by the RTC was valid, considering NHA's failure to comply with the jurisdictional requirements (particularly the tax declarations and tax receipts). The OSG maintained that the RTC had not yet acquired jurisdiction over the petition; that the dismissal was not with prejudice, for what the RTC proscribed was the filing of a petition for reconstitution for TCT No. 1356 in another court that would constitute forum shopping; and that RTC rightly ruled on whether or not NHA had timely filed its notice of appeal.

Ruling

We affirm the CA's resolutions, but we clarify that NHA may refile its petition for reconstitution of TCT No. 1356.

A.
CA correctly dismissed the petition;
RTC did not commit grave abuse of discretion

Anent whether the CA correctly dismissed NHA's petition for *certiorari*, the Court stresses that NHA, as the petitioner, had the obligation to comply with the basic requirements for the filing of a petition for *certiorari* prescribed in Rule 65 of the *Rules of Court*, specifically to accompany the petition with a "certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46."

Section 3 of Rule 46 of the *Rules of Court*, which governs original cases filed in the CA (of which NHA's petition for *certiorari* was one), reiterates the requirements prescribed in Rule 65, thus:

> Section 3. *Contents and filing of petition; effect of non-compliance with requirements*. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
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> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and **shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto**. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.
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> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same;

and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.

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

However, as the CA's resolution of September 7, 2001 revealed, NHA did not attach "the petition for reconstitution filed with the trial Court and other resolutions or orders of the court before its dismissal of the petition, documents which are considered relevant and pertinent thereto."[9]

The omission was fatal to the petition for *certiorari* of NHA. Section 3, Rule 46, of the *Rules of Court, supra*, expressly provides that: "*The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.*" Dismissal of the petition was the recourse of the CA, because the requirements imposed by the *Rules of Court* were not to be lightly treated or disregarded due to the omitted documents being essential in a special civil action for *certiorari*, a proceeding by which a superior court determines whether the respondent court or judge acted without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Concerning whether the RTC properly disallowed NHA's appeal on the ground of NHA's period to appeal having already expired, the RTC did not thereby commit any grave abuse of discretion. The CA's second assailed resolution of October 27, 2003[10] reasonably and validly denied NHA's motion for reconsideration, as its following ratiocination made clear, to wit:

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[9] *Rollo*, pp. 124-125.

[10] *Supra*, note 2.

Moreover, We find no grave abuse of discretion on the part of respondent judge in denying petitioner's notice of appeal. It is settled that perfection of an appeal within the reglementary period is not only mandatory but jurisdictional. Failure to comply with this requirement renders the questioned decision final and executory.

Here, petitioner's notice of appeal was filed beyond the reglementary period. The records show that petitioner received a copy of the RTC resolution dismissing its petition on January 24, 2001. It has fifteen (15) days from said date to appeal or until February 8, 2001. On February 8, 2001, petitioner filed a motion for reconsideration of the RTC resolution. This motion interrupted the period to appeal. The balance of the reglementary period, which in this case is one day, shall commence to run again from receipt of the order denying the motion for reconsideration. Petitioner received a copy of the RTC order denying the motion for reconsideration on June 20, 2001. It, however, filed its notice of appeal only on July 4, 2001.

ACCORDINGLY, the motion for reconsideration is DENIED for LACK OF MERIT.

SO ORDERED.

At the time the RTC issued its resolution denying due course to NHA's notice of appeal on July 24, 2001, the applicable rule was Section 3 of Rule 41 of the *Rules of Court*,[11] which stated that the period for taking an ordinary appeal is *within* 15 days from notice of the judgment or final order appealed from. The filing of a motion for new trial or reconsideration interrupted the running of the period of appeal, which began to run again from the movant's receipt of notice of the order denying the motion. Thus, NHA had only the balance of the period within which to perfect an appeal, the balance being the number of days remaining in its reglementary period after deducting the

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[11] Section 3. *Period of ordinary appeal*. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (n)

time during which the motion was pending, that is, from the date it filed the motion for reconsideration to the date it received the notice of denial of its motion for reconsideration. Considering that NHA filed its motion for reconsideration on the last day of the reglementary period, its appeal must be brought within the day following the service to it of the order denying its motion for reconsideration. Under the circumstances, NHA's notice of appeal was undeniably filed out of time.

NHA's stance might be correct under the pronouncement in *Neypes v. Court of Appeals*,[12] where the Court has allowed a *fresh period* of 15 days within which an aggrieved party may file the notice of appeal in the RTC, reckoned from the receipt of the order denying said party's motion for new trial or motion for reconsideration. Although *Neypes* has been intended to standardize the appeal periods under the *Rules of Court*, and has been applied retroactively in some cases due to its being a dictum on remedial law, the pronouncement could not now benefit NHA considering that the issue of whether or not the RTC had been guilty of grave abuse of discretion – the precise subject matter of its petition for *certiorari* – should be determined on the basis of the rules and jurisprudence then prevailing.

B.
NHA may refile its petition for reconstitution

A reading of the December 27, 2000 resolution[13] and the May 30, 2001 and June 29, 2001 orders of the RTC, *supra*,

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[12] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[13] The dispositive portion of the resolution reads:

x x x x x x x x x

WHEREFORE, premises considered, the application of petition for reconstitution (*sic*) is hereby DENIED for lack of merit.

No Petition for Reconstitution can be filed from hereon with any other court for TCT No. 1356 – this Court having exercised exclusive jurisdiction over the same in this Land Registration Case.

SO ORDERED.

reveals that the RTC thereby intended to foreclose NHA's option to refile its petition for reconstitution.

We declare, however, that the RTC's dismissal of NHA's petition for reconstitution, albeit *with prejudice*, does not bar NHA from filing another petition for reconstitution.

The RTC's express barring of NHA's right to refile its petition for reconstitution emanated more from judicial disapproval of NHA's mishandling of the petition than from any other reason. Yet, the bar was not insuperable, considering that the stated reason of thereby preventing NHA's possible forum shopping was unnecessary. The venue for a new petition for reconstitution would still be Quezon City due to the parcels of land covered by TCT No. 1356 being located entirely within Quezon City. As such, the RTC in Quezon City remained as the proper court for a refiled petition for reconstitution. Moreover, considering that at the time the orders of dismissal were issued NHA had not yet established the facts essential for the RTC to proceed on its petition for reconstitution, the RTC's dismissal did not amount to an adjudication on the merits of the petition and was thus not a viable basis for a bar by *res judicata*.

WHEREFORE, the Court affirms the resolutions promulgated on September 7, 2001 and October 27, 2003 in CA-G.R. SP No. 66409, without prejudice to National Housing Authority's filing of a new petition for reconstitution of TCT No. 1356.

No pronouncement on costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 163039. April 6, 2011]

HEIRS OF FRANCISCO RETUYA, FELICITAS R. PINTOR, HEIRS OF EPIFANIA R. SEMBLANTE, namely, PREMILINO SEMBLANTE, LUCIFINA S. TAGALOG, URSULINA S. ALMACEN; HEIRS OF JUAN RETUYA, namely, BALBINA R. RODRIGUEZ, DOLORES R. RELACION, SINFOROSA R. BASUBAS, TEOPISTA R. BASUBAS, FERNANDO RETUYA, BALDOMERO RETUYA, TEOFILO RETUYA, LEONA COLINA, FIDELA R. RAMIREZ, MARTINA R. ALBAÑO, SEVERINA R. CABAHUG; HEIRS OF RAFAELA VILLAMOR; ELIZABETH V. ALESNA; HEIRS OF QUINTIN RETUYA, namely, FELIMON RETUYA, SOFIA RETUYA, RUDOLFA RETUYA and ELISA RETUYA, *petitioners, vs.* **HONORABLE COURT OF APPEALS, HON. ULRIC CAÑETE as Presiding Judge of REGIONAL TRIAL COURT Branch 55, Mandaue City, NICOLAS RETUYA; HEIRS OF EULOGIO RETUYA, namely, MIGUEL RETUYA, RAMON RETUYA, GIL RETUYA, PIO RETUYA, MELANIO RETUYA, NICANOR RETUYA, LEONILA RETUYA, AQUILINA RETUYA, LUTGARDA RETUYA and PROCOPIO VILLANUEVA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; SUBSTANTIAL COMPLIANCE RULE FINDS NO APPLICABILITY IN VIEW OF THE PARTIES' DISHONESTY COMMITTED AGAINST THE APPELATE COURT.— As correctly observed by the CA, while we have in a number of cases applied the substantial compliance rule on the filing of the certification of non-forum shopping, specially when majority of the principal parties had signed the same and who shared

a common interest, We agree with the CA that such leniency finds no applicability in this case because of petitioners' dishonesty committed against the appellate court. A perusal of the verification and certification against forum shopping attached to the petition for annulment of judgment filed in the CA would show that there was a signature above the typewritten name of Quintin. In fact, written below the signature of Quintin was Community Tax Certificate (CTC) No. 06570132, issued on January 8, 2003 in Mandaue City. Thus, it would appear that Quintin, who was already dead at the time the petition was filed, had signed the verification and certification of non-forum shopping and he was even in possession of a CTC. Petitioners' actuation showed their lack of forthrightness to the CA which the latter correctly found to be a dishonest act committed against it.

2. REMEDIAL LAW; SUBSTITUTION OF COUNSEL; REQUIREMENTS TO BE VALID, NOT COMPLIED WITH IN CASE AT BAR.— We also find that the CA correctly denied the motion for reconsideration on the ground that Atty. Renante dela Cerna, the lawyer who filed the motion for reconsideration, had no right to represent petitioners. Under Section 26, Rule 138 of the Rules of Court and established jurisprudence, a valid substitution of counsel has the following requirements: (1) the filing of a written application for substitution; (2) the client's written consent; (3) the consent of the substituted lawyer if such consent can be obtained; and, in case such written consent cannot be procured, (4) a proof of service of notice of such motion on the attorney to be substituted in the manner required by the Rules. In this case, petitioners failed to comply with the above requirements.

APPEARANCES OF COUNSEL

STEPLAW Firm Cebu for petitioners.
Zosa & Quijano Law Offices for repondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Resolutions dated November 28, 2003[1] and March 3, 2004[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76235, which dismissed petitioners' Petition for Annulment of Judgment and their Motion for Reconsideration, respectively.

Severo Retuya (Severo) and Maxima Mayol Retuya (Maxima) were husband and wife without any children. Severo left several parcels of land registered under his name which are located in Mandaue City, to wit:

A parcel of land situated in Barangay Tipolo, City of Mandaue, known as Lot No. 113-U of the Subdivision Plan, Psd -07-016382 being a portion of Lot No. 113, II-5121 Amd. (Hacienda Mandaue) LRC Rec. 4030, containing an area of Two Hundred and Eighty-One (281) sq. meters described in the Transfer Certificate of Title No. 26728 in the Office of the Registry of Land Title and Deeds of Mandaue City.

A parcel of land located in Barangay Tipolo, Mandaue City, known as Lot No. 5 of the consolidation of Lot No. 122-Q, 122–R, 122-S, 122-T, 122-U, 122-V, 122-W, 122-X, 122-U, 122-AA, Psd 07-05-12450, LRC Rec. No. 4030, containing an area of Five Hundred Seventy-Four (574) sq. meters, described in the Transfer Certificate of Title No. 25213 of the Office of the Registry of Land Title and Deeds of Mandaue City.

A parcel of land located in Barangay Tipolo, Mandaue City, known as Lot No. 10 of the consolidation of Lot No. 122-Q, 122-R, 122-S, 122-T, 122-U, 122-V, 122-W, 122-X, 122-Y and 122-AA, Psd 07-05-12450, LRC Rec. No. 4030, containing an area of Four Hundred Forty-Two (442) sq. meters, described in

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[1] Penned by Associate Justice Remedios Salazar-Fernando, with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam, concurring: *rollo*, pp. 35-36.

[2] *Id.* at 47-50.

the Transfer Certificate of Title No. 25218 of the Office of the Registry of Land Title and Deeds of Mandaue City.

A parcel of land, Lot No. 121-1-10 of the subdivision plan, Psd 07-023191, being a portion of Lot 121-1, LRC Psd. 262374, LRC Rec. No. 4030 located in Banilad, Mandaue City, containing an area of One Thousand Five Hundred (1,500) sq. meters described under TCT 32718 of the Registry of Land Title and Deeds of Mandaue City.

A parcel of land, Lot No. 47-L of the subdivision plan Psd. 07-05-012479, being a portion of Lot 47-11-5121 Amd Hacienda Mandaue LRC Rec. No. 4030, situated in Barangay Banilad, Mandaue City, covered by TCT 21687 in the Registry of Land Titles and Deeds for the City of Mandaue.[3]

Some of these parcels of land were covered by a lease contract, the rentals of which were received by respondents Nicolas Retuya and Procopio Villanueva, while Lot No. 47-L, covered by TCT No. 21687, was previously sold by the Heirs of Severo and Maxima Retuya to third persons.

On June 14, 1961, Severo died intestate, survived by his wife Maxima and by Severo's full blood brothers and sisters, namely, Nicolas, Francisco, Quintin, Eulogio, Ruperto, Epifania, Georgia and the Heirs of Juan Retuya (Severo's brother who had died earlier), as well as Severo's half-blood siblings, namely, Romeo, Leona, Rafaela, Fidela, Severina and Martina.

Sometime in 1971, Maxima also died intestate, survived by her siblings, namely, Fructuoso, Daniel, Benjamin, Lorenzo, Concepcion and Teofila.

In 1996, Severo and Maxima's siblings and their nephews and nieces, herein petitioners, filed with the Regional Trial Court (RTC) of Mandaue City, an action[4] for judicial partition of the above-mentioned real properties registered under the names of Severo and Maxima, and the accounting of the rentals derived therefrom against Severo's two other brothers, respondents

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[3] Records, pp. 2-3.

[4] Docketed as Civil Case No. MAN-2602; raffled off to Branch 55.

Nicolas and his son Procopio Villanueva, and Eulogio, who was represented by the latter's heirs.

Respondents Heirs of Eulogio filed their Answer[5] claiming that Severo had already sold the subject lands to their father Eulogio by virtue of a notarized Deed of Absolute Sale of Interests and *Pro Indiviso* Shares to Lands dated March 29, 1961; thus, petitioners have no right to ask for the partition of the subject properties, as respondents heirs are the owners of the same. On the other hand, respondents Nicolas and his son Procopio filed their Answer[6] admitting to have collected rentals on some of the subject properties and that such rentals were still intact and ready for partition; and that they were willing to partition the properties but were opposed by their co-respondents.

After trial, the RTC rendered a Decision[7] dated August 9, 2001, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, judgment is rendered declaring the heirs of Eulogio Retuya as owners of the 1/16 share of Severo Retuya to ½ of the subject properties representing the shares of the late Severo Retuya which he inherited from his deceased father, Esteban Retuya and which he sold to Eulogio Retuya as follows:
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> |---|---|
> | Lot 113-U | - 48.78 sq. meters |
> | Lot 5 | - 99.65 sq. meters |
> | Lot 121-1-10-260 | - 42 sq. meters. |
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> and that the remaining areas of these properties, which have not been sold to defendants Heirs of Eulogio Retuya, as well as the rental, be partitioned among the herein parties in accordance with law.
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> Lot No. 10 is a road right of way and should not be partitioned.[8]

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[5] Records, pp. 13-16.

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

[7] Per Judge Ulric R. Cañete; *rollo*, pp. 73-80.

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

Respondents Heirs of Eulogio filed a Motion for Correction[9] of Mathematical Computation of their share in Lot 121-1-10 alleging that their correct share should be 255 sq. meters, instead of 42 sq. meters.

Petitioners, through their then counsel, Atty. Ernesto B. Mayol, filed a Comment[10] manifesting that they will submit and abide by whatever resolution the RTC may adopt or render in relation to the Motion for Correction of Mathematical Computation. The other respondents, represented by Atty. Basilio Duaban, did not file any comment despite receipt of the Order[11] to do so.

On October 23, 2001, the RTC issued an Order,[12] the dispositive portion of which reads:

> WHEREFORE, the decision dated August 9, 2001 is amended by changing the area of 42 sq. meters to 255 sq. meters, and the dispositive portion of said decision will now read as follows:
>
> WHEREFORE, premises considered, judgment is rendered declaring the Heirs of Eulogio Retuya as owners of the 1/16 share of Severo Retuya to the ½ of the subject properties representing the shares of the late Severo Retuya, which he inherited from his deceased father, Esteban Retuya and which he sold to Eulogio Retuya as follows:
>
> | | |
> |---|---|
> | Lot 113-U | 48.78 sq. meters |
> | Lot 5 | 99.65 sq. meters |
> | Lot 121-1-10-260 | 255 sq. meters |
>
> and that the remaining areas of these properties, which have not been sold to defendants Heirs of Eulogio Retuya as well as the rental be partitioned among the herein parties in accordance with law.
>
> Lot No. 10 is a road right of way and should not be partitioned.

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[9] Records, pp. 193-194.

[10] *Id.* at 197.

[11] *Id.* at 198-199.

[12] *Id.*

Furnish parties, through counsels, copy of this Order for their information.[13]

The RTC decision became final and executory.[14]

Respondents Heirs of Eulogio filed a Motion for the Issuance of a Writ of Execution, which the RTC granted in its Order[15] dated March 15, 2002.

Petitioners, through Atty. Norberto Luna, Jr., as collaborating counsel, filed a Motion to Hold in Abeyance the Implementation of the Writ of Execution with Motion for Clarification and Precautionary Reservation to File Pertinent Pleadings and Legal Remedies.[16] Respondents Heirs of Eulogio filed their Opposition[17] thereto.

In an Order[18] dated June 14, 2002, the RTC denied the motion, and the Writ of Execution[19] was issued.

Respondents Heirs of Eulogio filed a Motion to Authorize the Branch Clerk of Court to Enforce the Amended Decision.[20] Petitioners were ordered by the RTC to file their Comment thereto.[21]

Petitioners filed their Comment with Prayer for the Issuance of a Clarificatory Order[22] as to how the RTC arrived at the new computation of 255 sq. meters from the original award of 42 sq. meters for Lot No. 121-1-10-260.

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[13] *Id.*

[14] *Id.* at 205.

[15] *Id.* at 208.

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

[17] *Id.* at 214-215.

[18] *Id.* at 218.

[19] *Id.* at 220-221.

[20] *Id.*

[21] *Id.* at 233.

[22] *Id.* at 235-237.

In an Order[23] dated February 17, 2003, the RTC, after finding that what was at issue was just the matter of mathematical computation of the area adjudicated to the parties, and in the interest of substantial justice, set a conference to settle once and for all the exact computation of the parties' respective shares.

On February 24, 2003, petitioners filed with the CA a Petition for Annulment of Judgment of the RTC Order dated October 23, 2001, amending the decision dated August 9, 2001, claiming that the questioned Order was a patent nullity for want of jurisdiction and utter lack of due process.

On April 30, 2003, petitioners filed with the RTC a Manifestation[24] submitting the mathematical computation and/or mode of partitioning the shares of the opposing parties.

As the RTC was in receipt of a copy of the Petition for Annulment of Judgment filed with the CA, it issued an Order[25] holding in abeyance the resolution of respondents' Motion to Authorize the Branch Clerk of Court to enforce the RTC decision pending such petition.

In a Resolution[26] dated April 24, 2003, the CA outrightly dismissed the Petition for Annulment of Judgment. It found that three of the petitioners, namely, Promilino Semblante, Salome Retuya and Fernando Retuya, did not sign the certification of non-forum shopping; and that the payment of the docket fee was short of ₱480.00.

Petitioners filed their Motion for Reconsideration, which the CA granted in a Resolution[27] dated July 3, 2003 and reinstated the petition.

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[23] *Id.* at 239.

[24] *Id.* at 270-273.

[25] *Id.* at 274-275.

[26] *Rollo*, pp. 83-84.

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

On July 22, 2003, respondents Heirs of Eulogio filed a Motion for Reconsideration of the July 3, 2003 Resolution,[28] on the ground that it was made to appear in the Petition for Annulment of Judgment that Quintin Retuya, one of the petitioners, had signed the certification against forum shopping on March 18, 2003, when he had already died on July 29, 1996; that the signature of co-petitioner Romeo Retuya in the certification against forum shopping was not his, as compared to his signature in the letter which respondents attached to the motion for reconsideration; and that Romeo suffered a stroke in January 2003 and was bedridden until he died on April 28, 2003.

In a Resolution dated November 28, 2003, the CA granted respondents' Motion for Reconsideration and dismissed the petition, as no Comment was filed by petitioners. The CA said that Section 5, Rule 7 of the Rules of Court provides that the principal party shall sign the certification against forum shopping, as the attestation requires personal knowledge by the party who executed the same, otherwise, it would cause the dismissal of the petition. Considering that Quintin, one of the parties to the petition, died on July 29, 1996, it could have been impossible for him to sign the Petition dated March 18, 2003.

A Motion for Reconsideration[29] was filed by Atty. Renante dela Cerna as counsel for petitioners, contending that there was substantial compliance with the rule on certification against forum shopping when majority of the principal parties were able to sign the verification and certification against forum shopping. Attached in the motion for reconsideration was the affidavit of the Heirs of Quintin acknowledging said mistake and submitted a verification and certification duly signed by the heirs.

On March 3, 2004, the CA issued a Resolution denying petitioners' motion for reconsideration. In so ruling, the CA said:

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[28] *Rollo,* pp. 103-104.

[29] *Id.* at 37-44.

While it may be true that when majority of the parties have signed the certification against non-forum shopping would constitute "substantial compliance," this Court cannot apply the same rule to petitioners. First, petitioners' counsel failed to explain why a dead person/party was able to sign the certification against non-forum shopping. The issue is not the parties' substantial compliance, but the dishonesty committed by the parties and/or their counsel when they made it appear that one of the listed parties signed the certification when in fact he died long before the petition was filed. Under Circular No. 28-91 of the Supreme Court and Section 5, Rule 7 of the Rules of Court, the attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. The liberal interpretation of the rules cannot be accorded to parties who commit dishonesty and falsehood in court.

Second, records reveal that this Motion for reconsideration was signed by a certain Atty. Renante A. Dela Cerna as counsel for the petitioners without the counsel of record, Atty. Norberto A. Luna's formal withdrawal. No notice of substitution of counsel was filed by the petitioners and Atty. Dela Cerna never entered his appearance as counsel for petitioner.

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There being no formal withdrawal or substitution of counsel made, Atty. Norberto A. Luna remains the counsel of record for petitioners. Atty. Luna may not be presumed substituted by Atty. Renante Dela Cerna merely by the latter's filing or signing of the motion for reconsideration. In the absence of compliance with the essential requirements for valid substitution of counsel of record, the court can presume that Atty. Luna continuously represents the petitioners. Hence, Atty. Renante Dela Cerna has no right to represent the petitioners in this case.[30]

Hence, this petition wherein petitioners raise the sole ground that:

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING THE PETITIONERS' PETITION BY RULING AGAINST THE PETITIONERS' SUBSTANTIAL COMPLIANCE TO THE CERTIFICATION AGAINST NON-FORUM SHOPPING FOR THE ALLEGED DISHONESTY COMMITTED BY THE PARTIES

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

AND/OR THEIR COUNSEL WHEN THEY MADE IT APPEAR THAT ONE OF THE LISTED PARTIES SIGNED THE CERTIFICATION, WHEN IN FACT HE DIED BEFORE THE PETITION WAS FILED.[31]

The CA dismissed the Petition for Annulment of Judgment after it found that Quintin, one of the parties to the petition, had already died on July 29, 1996, thus, it was impossible for him to have signed the verification and certification of non-forum shopping attached to the petition filed on March 18, 2003. The CA found petitioners to have committed dishonesty and falsehood to the court, thus, it could not apply the liberal interpretation of the rule on certification against forum shopping.

We found no reversible error committed by the CA.

As correctly observed by the CA, while we have in a number of cases[32] applied the substantial compliance rule on the filing of the certification of non-forum shopping, specially when majority of the principal parties had signed the same and who shared a common interest, We agree with the CA that such leniency finds no applicability in this case because of petitioners' dishonesty committed against the appellate court. A perusal of the verification and certification against forum shopping attached to the petition for annulment of judgment filed in the CA would show that there was a signature above the typewritten name of Quintin. In fact, written below the signature of Quintin was Community Tax Certificate (CTC) No. 06570132, issued on January 8, 2003 in Mandaue City. Thus, it would appear that Quintin, who was already dead at the time the petition was filed, had signed the verification and certification of non-forum shopping and he was even in possession of a CTC. Petitioners' actuation showed their lack of forthrightness to the CA which the latter correctly found to be a dishonest act committed against it.

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[31] *Id.* at 26.

[32] *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, G.R. No. 165821, June 21, 2005, 460 SCRA 561; *Cavile v. Heirs of Clarita Cavile*, 448 Phil. 302, 311 (2003).

Petitioners allege that the explanation of their former counsel on record, Atty. Luna, to the show cause order issued by the CA to him that: (1) he had no intention to make it appear that a dead man in the person of Quintin was able to sign the verification and certification against forum shopping; (2) when he entered his appearance as counsel for petitioners before the RTC, he, the RTC, the co-petitioners and the other respondents, as well as their counsel, knew of the fact of Quintin's death and the status of Felimon Retuya who immediately substituted his father, and in behalf of his siblings; (3) that in his entry of appearance filed before the RTC, it was Felimon, one of Quintin's heirs, who signed in the above typewritten name of Quintin, were found by the CA to be meritorious and noted the same. Thus, petitioners claim that they also have no intention of deceiving respondents, since as explained by Atty. Luna, all the parties and counsels knew of the death of Quintin.

We are not persuaded.

Notwithstanding that the CA had found the explanation of Atty. Luna to be meritorious, the CA did not err when it dismissed the petition. Notably, there was a signature above the typewritten name of Quintin without any showing that it was signed by another person for or in behalf of Quintin. In the absence of such qualification, it appeared before the CA that Quintin was the one who signed the same, especially since the CA did not know of the fact of Quintin's death. There was nothing in the petition for annulment of judgment which alleged such information. In fact, we do not find any sufficient explanation given by petitioners as to why there was a signature of Quintin appearing in the verification and certification against forum shopping.

We also find that the CA correctly denied the motion for reconsideration on the ground that Atty. Renante dela Cerna, the lawyer who filed the motion for reconsideration, had no right to represent petitioners.

Under Section 26, Rule 138 of the Rules of Court and established jurisprudence, a valid substitution of counsel has

the following requirements: (1) the filing of a written application for substitution; (2) the client's written consent; (3) the consent of the substituted lawyer if such consent can be obtained; and, in case such written consent cannot be procured, (4) a proof of service of notice of such motion on the attorney to be substituted in the manner required by the Rules.[33] In this case, petitioners failed to comply with the above requirements.

Atty. Dela Cerna, as counsel for petitioners, filed the motion for reconsideration on December 22, 2003. However, he is not the counsel on record of petitioners, but Atty. Luna. Petitioners did not file a motion for substitution of counsel on record before the filing of the motion for reconsideration. It is worthy to mention that Atty. Dela Cerna did not even file a notice of appearance. If it has been held that courts may not presume that the counsel of record has been substituted by a second counsel merely from the filing of a formal appearance by the latter,[34] then with more reason that Atty. Dela Cerna could not be considered to have substituted Atty. Luna as there was no notice of his entry of appearance at all.

The fact that Atty. Luna was still the counsel on record at the time Atty. Dela Cerna filed his motion for reconsideration was established in Atty. Luna's Explanation dated March 19, 2004 to the CA's Show Cause Order to him wherein he prayed therein that an Order be issued relieving him of his legal obligations to petitioners. Moreover, on April 30, 2004, petitioners through their counsel on record, Atty. Luna, filed a motion for substitution of counsels wherein they alleged that they engaged the services of Atty. Jorge Esparagosa as their new counsel and relieved Atty. Luna of all his legal obligations to them. Notably, there was no mention at all of Atty. Dela Cerna. Indeed, there was no showing of the authority of Atty. Dela Cerna to file the motion for reconsideration for petitioners.

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[33] See *Bernardo v. Court of Appeals (Special Sixth Division*), G.R. No. 106153, July 14, 1997, 275 SCRA 413, 427, citing *Yu v. Court of Appeals*, 135 SCRA 181, 189-190 (1985), citing *Aban v. Enage*, 120 SCRA 778 (1983) and *Phil. Apparel Workers Union v. NLRC*, 125 SCRA 391 (1983).

[34] *Id.*, citing *Sumadchat v. Court of Appeals*, 111 SCRA 488, 499 (1982).

Thus, the CA correctly found that Atty. Dela Cerna has no personality to represent petitioners and file the motion for reconsideration.

WHEREFORE, the petition is *DENIED.* The Resolutions dated November 28, 2003 and March 3, 2004 of the Court of Appeals are *AFFIRMED.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169564. April 6, 2011]

JAMES BEN L. JERUSALEM, *petitioner, vs.* **KEPPEL MONTE BANK, HOE ENG HOCK, SUNNY YAP and JOSEFINA PICART,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE; THE BURDEN OF PROOF TO DISCHARGE THE BASES THEREFOR RESTS ON THE EMPLOYER; APPLICATION.— "Unlike in other cases where the complainant has the burden of proof to discharge its allegations, the burden of establishing facts as bases for an employer's loss of confidence in an employee – facts which reasonably generate belief by the employer that the employee was connected with some misconduct and the nature of his

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 978, dated March 30, 2011.

participation therein is such as to render him unworthy of trust and confidence demanded of his position – is on the employer." While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must, however, have some basis. Proof beyond reasonable doubt is not required. It is sufficient that there must only be some basis for such loss of confidence or that there is reasonable ground to believe, if not to entertain, the moral conviction that the concerned employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.

2. ID.; ID.; ID.; ID.; ACT THAT WOULD JUSTIFY THE LOSS OF TRUST AND CONFIDENCE, NOT PROVEN IN CASE AT BAR.— "The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary." Keppel's evidence against James fails to meet this standard. x x x From the findings of both the Labor Arbiter and the NLRC it is clear that James did nothing wrong when he handed over to Marciana the envelope containing the applications of persons under the referred accounts of Jorge who were later found to be fictitious. As the records now stand, James was no longer connected with the VISA Credit Card Unit when the 67 applications for VISA card were approved. At such time, he was already the Head of the Marketing and Operations of the Jewelry Department. His act therefore of forwarding the already accomplished applications to the VISA Credit Card Unit is proper as he is not in any position to act on them. The processing and verification of the identities of the applicants would have been done by the proper department, which is the VISA Credit Card Unit. Therefore, it is incumbent upon Marciana as Unit Head to have performed her duties. As correctly observed by the Labor Arbiter, Keppel had gone too far in blaming James for the shortcomings and imprudence of Marciana. The invocation of Keppel of the loss of trust and confidence as ground for James's termination has therefore no basis at all.

APPEARANCES OF COUNSEL

San Buenaventura Law Offices for petitioner.
Tan Acut Lopez & Pison Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

For breach of trust and confidence to become a valid ground for the dismissal of an employee, the cause of loss of trust and confidence must be related to the performance of the employee's duties.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated June 22, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 86988, which granted the petition for *certiorari* and reversed and set aside the Decision[3] dated June 25, 2004 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 029793-01 (NCR-00-10-05292-00). Also assailed is the CA Resolution[4] dated August 31, 2005 denying the Motion for Reconsideration thereto.

Factual Antecedents

James Ben L. Jerusalem (James) was employed by Keppel Monte Bank (Keppel) on May 25, 1998 as Assistant Vice-President. On June 1, 1998, he was assigned as Head of the newly created VISA Credit Card Department. The bank subsequently re-organized the VISA Credit Card Department and reduced it to a mere unit. On April 5, 1999, carrying the

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[1] *Rollo*, pp. 17-47.

[2] CA *rollo*, pp. 444-456; penned by Associate Justice Delilah Vidallon Magtolis and concurred in by Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr.

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

[4] *Id.* at 497; penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Arturo D. Brion (now Member of this Court) and Jose C. Reyes, Jr.

same rank, James was reassigned as Head of the Marketing and Operations of the Jewelry Department. The VISA Credit Card Unit was then headed by Senior Vice President Roberto Borromeo (Roberto) and supported by Marciana C. Gerena (Marciana), Rosario R. Ronquillo (Rosario), and Aileen Alcantara as Unit Head, Processor and Bookkeeper, respectively.

In or about May 1999, James received from Jorge Javier (Jorge) a sealed envelope said to be containing VISA Card application forms. Jorge is a Keppel Visa Card Holder since December 1998. James immediately handed over the envelope with accomplished application forms to the VISA Credit Card Unit. All in all, the VISA credit card applications referred by Jorge which James forwarded to the VISA Credit Card Unit numbered 67, all of which were subsequently approved. As it turned out, all the accounts under these approved applications became past due.

On July 20, 2000, Marciana sent a letter[5] to Jorge asking the latter to assist the bank in the collection of his referred VISA accounts which have already an accumulated principal balance of ₱6,281,443.90 excluding interest and service fees in the amount of ₱1,157,490.08. On the same date, James upon knowing the status of the accounts referred by Jorge, sent a Memorandum[6] to Roberto recommending the filing of a criminal case for estafa against Jorge. He further recommended that a coordination with the other banks where Jorge has deposits should be made promptly so that they can ask said banks to freeze Jorge's accounts. James even warned Keppel that immediate action should be taken while Jorge is still in the country.

On July 31, 2000, Jorge arranged a meeting with bank officials. The said meeting was attended by James and Marciana.

On August 9, 2000, James sent a Memorandum[7] to Napoleon Jamer (Napoleon), Vice-President of Audit Department, and to

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[5] *Id.* at 75.

[6] *Id.* at 76.

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

Atty. Rowena Wilwayco, Senior Manager of Legal Department. He summarized in the said Memorandum the events that transpired during the July 31, 2000 meeting with Jorge and reiterated his suggestion for Keppel to file a case against Jorge. He further suggested that Keppel look into the inside job angle of the approval of the VISA cards and that all key officers and staff should be probed for possible involvement.

On August 14, 2000, Napoleon issued a Memorandum[8] in reply to the August 9, 2000 Memorandum of James, advising the latter to coordinate with Roberto and not with him. Furthermore, James was requested not to interfere with the audit process being undertaken by the Audit Department.

On August 18, 2000, James received a Notice to Explain[9] from Keppel's Vice President for Operations, Sunny Yap (Sunny), why no disciplinary action should be taken against him for referring/endorsing fictitious VISA card applicants. The said referrals resulted in substantial financial losses to Keppel.

On August 23, 2000, James submitted his written explanation[10] to Sunny. He pointed out that he had no participation in the processing of the VISA card applications since he was no longer connected with the VISA Credit Card Unit at the time of such transactions. He explained that he can only endorse the applications referred by Jorge to the VISA Credit Card Unit because he was already transferred to Jewelry Department, as Head.

On September 26, 2000, the Manager for Human Resources Department, Josefina Picart, handed to James a Notice of Termination[11] informing the latter that he was found guilty of breach of trust and confidence for knowingly and maliciously referring, endorsing and vouching for VISA card applicants who later turned out to be impostors resulting in financial loss to

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

[9] *Id.* at 112.

[10] *Id.* at 116-120.

[11] *Id.* at 157-159.

Keppel. This prompted James to file before the Labor Arbiter a complaint for illegal dismissal, illegal confiscation of car with prayer for the payment of vacation/sick leaves, 13th month pay, damages, attorney's fees and full backwages against Keppel on October 9, 2000.

Ruling of the Labor Arbiter

On August 15, 2001, Labor Arbiter Daisy G. Cauton-Barcelona rendered a Decision[12] finding Keppel guilty of illegal dismissal.

The dispositive portion of the Labor Arbiter's Decision reads:

> VIEWED IN THE LIGHT OF THE FOREGOING, the dismissal being illegal, the complainant should be paid his backwages from the time of his illegal termination up to the date of this decision in the amount of ₱584,204.54; in lieu of reinstatement, the complainant is further ordered paid his separation pay equivalent to one (1) month pay for every year of service, in the amount of ₱150,000.00; the amounts of ₱100,000.00 and ₱50,000.00 pesos as payment for moral and exemplary damages respectively; and ten (10%) percent of the total monetary award as and for attorney's fees, or the aggregate amount of ₱957,624.99.
>
> Respondents are further ordered to deliver to complainant his car, Toyota Corona with plate number THE 735 without prejudice to the payment of the remaining balance thereon.
>
> SO ORDERED.[13]

Ruling of the National Labor Relations Commission

Keppel sought recourse to the NLRC which issued a Decision[14] dated June 25, 2004 affirming the Decision of the Labor Arbiter with the modification that the award of moral and exemplary damages be deleted and that the attorney's fees be based on the 13th month pay and service incentive leave pay.

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[12] *Id.* at 254-269.

[13] *Id.* at 268-269.

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

Keppel filed a Motion for Reconsideration[15] which was denied by the NLRC in a Resolution[16] dated July 30, 2004.

Aggrieved, Keppel filed with the CA a Petition for *Certiorari*.[17]

Ruling of the Court of Appeals

The CA found merit in the petition and granted the same through a Decision[18] dated June 22, 2005, the dispositve portion of which reads:

> WHEREFORE, the petition is GRANTED. The assailed decision and resolution of the public respondent are hereby SET ASIDE, and a new judgment is entered DISMISSING the private respondent's complaint for lack of merit.
>
> SO ORDERED.[19]

Petitioner moved for reconsideration[20] but to no avail.[21] Hence, this appeal raising the following issues:

Issues

A. THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVERSED THE CONCURRING FINDINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION THAT RESPONDENTS' DISMISSAL OF PETITIONER BASED ON ALLEGED LOSS OF TRUST AND CONFIDENCE HAS NO BASIS AT ALL AND THEREBY DECLARING THE DISMISSAL OF PETITIONER AS JUSTIFIED.

B. THE COURT OF APPEALS GRAVELY ERRED IN DECLARING PETITIONER'S DISMISSAL AS LEGAL AND

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[15] *Id.* at 298-329.

[16] *Id.* at 497.

[17] *Id.* at 2-25.

[18] *Id.* at 444-456.

[19] *Id.* at 13.

[20] See petitioner's Motion for Reconsideration, *id.* at 461-473.

[21] See Resolution dated August 31, 2005, *id.* at 49.

EFFECTIVELY DELETING THE MONETARY AWARDS BY THE LABOR ARBITER AND NLRC.

C. THE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING THE DECISION OF THE LABOR ARBITER AND X X X [THE] RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION BY USING A SUPREME COURT RULING WHICH IS NOT APPLICABLE TO THE INSTANT CASE.[22]

The above issues can be summed up to the sole issue of whether Keppel legally terminated James's employment on the ground of willful breach of trust and confidence.

Petitioner's Arguments

Petitioner believes that the Labor Arbiter and the NLRC, who are deemed to have acquired expertise in matters within their respective jurisdictions, correctly held that there was no basis to justify the alleged loss of trust and confidence of respondents on petitioner.

He avers that a dismissal based on loss of trust and confidence should be proven by substantial evidence and founded on clearly established facts. As culled from the records and as correctly cited by the lower tribunals, respondents have not been able to show any concrete proof that petitioner had participated in the approval of the subject credit cards and that his only participation was his act of forwarding the applications to the VISA Credit Card Unit of which he is no longer the head.

Furthermore, the loss of trust and confidence in addition to being willful and without justifiable excuse must also be work-related rendering the employee concerned unfit to continue working. In this case, petitioner points out that he was not anymore connected with the VISA Credit Card Unit when the alleged credit card scam happened and claims that he had nothing to do with the approval of the said card applications. Hence, he should not be made answerable for the erroneous judgment of the officers of the VISA Credit Card Unit.

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[22] *Rollo,* p. 30.

Respondents' Arguments

Loss of trust and confidence is a valid ground for dismissing an employee, provided that same arises from proven facts. Termination of employment on this ground does not require proof beyond reasonable doubt of the employee's conduct. It is sufficient that there is some basis for the loss of trust or that the employer has reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded of his position.

In this case, respondents believe that the testimonies of Marciana and Rosario who were former subordinates of James in the VISA Credit Card Unit deserve full faith and credence in the absence of any evidence that they were impelled by improper motives. The two corroborated each other in saying that no credit investigation and residence checking were conducted on the applications endorsed by Jorge because there was a specific instruction from James for them not to conduct the said investigations and validation as he was personally vouching for the existence and validity of the said accounts.

The dismissal of James is therefore valid in view of the overwhelming and unrebutted evidence presented against him. It is the prerogative of management to dismiss petitioner, who is a managerial employee, for loss of trust and confidence.

Our Ruling

The petition is impressed with merit.

Article 282 of the Labor Code states:

ART. 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;

(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.

Article 282(c) of the Labor Code prescribes two separate and distinct grounds for termination of employment, namely: (1) fraud; or (2) willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

"Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence."[23] As provided for in Article 282, an employer may terminate an employee's employment for fraud or willful breach of trust reposed in him. "But, in order to constitute a just cause for dismissal, the act complained of must be 'work-related' such as would show the employee concerned to be unfit to continue working for the employer."[24]

Keppel has the burden of proof to discharge its allegations.

"Unlike in other cases where the complainant has the burden of proof to discharge its allegations, the burden of establishing facts as bases for an employer's loss of confidence in an employee – facts which reasonably generate belief by the employer that the employee was connected with some misconduct and the nature of his participation therein is such as to render him unworthy of trust and confidence demanded of his position – is on the employer."[25]

While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must, however, have some basis. Proof beyond reasonable doubt is not required. It is sufficient that there must only be

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[23] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, 489 Phil. 483, 496 (2005).

[24] *Id.*

[25] *Felix v. National Labor Relations Commission*, 485 Phil. 140, 153 (2004).

some basis for such loss of confidence or that there is reasonable ground to believe, if not to entertain, the moral conviction that the concerned employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.[26]

Keppel failed in discharging the burden of proof that the dismissal of James is for a just cause.

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be holding a position of trust and confidence. In this case, there is no doubt that James held a position of trust and confidence as Assistant Vice-President of the Jewelry Department.

"The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary."[27] Keppel's evidence against James fails to meet this standard.

Worthy to note is the pertinent portion of the Decision of Labor Arbiter Daisy G. Cauton-Barcelona, to wit:

> Looking closely at the circumstances obtaining herein, we note that respondent bank has not been able to show any concrete proof that indeed complainant had participated in the approval of the questioned VISA CARD accounts. The records [are] bereft of any concrete showing that complainant directed Ms. Gerena to approve the applications without passing through the process. The alleged marginal notations in the applications were admittedly scribbled by Ms. Gerena. Even assuming that there are such notations on the

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[26] *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg*, 443 Phil. 866, 874-875 (2003).

[27] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 694.

applications *i.e.*, "c/o James Jerusalem", still, such notations to us can not be construed as a directive coming from complainant to specifically do away with existing policy on the approval of applications for VISA Card.

Of course, we concede to the fact that respondent had sustained losses on account of the so-called "credit card scam" in the amount of ₱7,961,619.82 all coming from the accounts referred x x x by Mr. Jorge Javier, but no amount of mind boggling can we infer that the mere act of handing the already accomplished forms for VISA CREDIT Card could be interpreted as "Favorable endorsement" with instructions not to conduct the usual credit investigation/verification of applicants. To lay the blame upon the complainant would be at the height of injustice considering that at that time, he no longer has the authority to pass upon such applications. To attribute such huge financial losses to one who is no longer connected with the VISA Card department would be stretching too far, the import of the term "some basis." We simply could not see our way through how respondent bank could have inferred that complainant made such instruction upon Ms. Gerena to forego the usual process and have the applications approved without any direct evidence showing to be so.[28]

Also significant is the findings of the NLRC that petitioner had not committed any acts inimical to the interest of Keppel. The NLRC stated, *viz*:

The lines having been drawn between the VISA Card Unit and the Jewelry Department, the complainant who is assigned with the latter as Vice-President can not be made responsible for the misdeeds of those in the former. Moreover, the act of betrayal of trust if any, must have been committed by the employee in connection with the performance of his function or position. Verily, in this case, complainant who has nothing to do with the approval of VISA Cards, should not be made answerable to the imprudence and indiscretion of Ms. Gerena and Ms. Ronquillo.[29]

"Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned

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[28] CA *rollo*, pp. 264-265.

[29] *Id.* at 31.

holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer."[30]

From the findings of both the Labor Arbiter and the NLRC it is clear that James did nothing wrong when he handed over to Marciana the envelope containing the applications of persons under the referred accounts of Jorge who were later found to be fictitious. As the records now stand, James was no longer connected with the VISA Credit Card Unit when the 67 applications for VISA card were approved. At such time, he was already the Head of the Marketing and Operations of the Jewelry Department. His act therefore of forwarding the already accomplished applications to the VISA Credit Card Unit is proper as he is not in any position to act on them. The processing and verification of the identities of the applicants would have been done by the proper department, which is the VISA Credit Card Unit. Therefore, it is incumbent upon Marciana as Unit Head to have performed her duties. As correctly observed by the Labor Arbiter, Keppel had gone too far in blaming James for the shortcomings and imprudence of Marciana. The invocation of Keppel of the loss of trust and confidence as ground for James's termination has therefore no basis at all.

Having shown that Keppel failed to discharge its burden of proving that James's dismissal is for a just cause, we have no other recourse but to declare that such dismissal based on the ground of loss of trust and confidence was illegal. This is in consonance with the constitutional guarantee of security of tenure.

WHEREFORE, the instant Petition for Review on *Certiorari* is *GRANTED*. The Decision dated June 22, 2005 and the Resolution dated August 31, 2005 of the Court of Appeals in CA-G.R. SP

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[30] *Sulpicio Lines, Inc. v. Gulde*, 427 Phil. 805, 810 (2002).

No. 86988 are *REVERSED and SET ASIDE* and the Decision dated June 25, 2004 and Resolution dated July 30, 2004 of the National Labor Relations Commission are *REINSTATED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 169627. April 6, 2011]

ROSEMARIE SALMA ARAGONCILLO-MOLOK, *petitioner, vs.* **SITY AISA BARANGAI MOLOK,** *respondent.*

SYLLABUS

POLITICAL LAWL; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; VIOLATED IN CASE AT BAR.— Petitioner was merely notified of the hearing of respondent's petition on March 28, 2005 by Order of January 24, 2005. Neither respondent nor the trial court furnished petitioner with a copy of respondent's petition and its annexes, despite her plea therefor. Indeed, when the trial court ignored her plea, through her "Manifestation (With prayer for reconsideration of the January 2[4], 2005 Order)" dated March 16, 2005, that she be furnished with a copy of respondent's petition and its annexes so that she could file her opposition thereto, petitioner was denied her day in court. Why petitioner's plea was unheeded, no reason was proffered by the trial court. It need not be underlined that her plea was meritorious, given the *adversarial* nature of the proceedings under Rule 108. In raising the issue of denial of due process in petitioner's motion for

reconsideration of the decision, the trial court, by Order of July 25, 2005, did not specifically address the same. Oddly, said Order was issued on *July 25, 2005*, when petitioner's motion for reconsideration was set for hearing yet on *September 1, 2005*, albeit no hearing was held since; as stated earlier, it was a non-working Muslim holiday, and despite the Clerk of Court's assurance that petitioner would be advised of the date of resetting of the hearing.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Fabiosa Duterte Zamora & Cimafranca Law Firm for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Sity Aisa Barangai Molok (respondent) and Col. Agakhan M. Molok, both residents of Matina, Davao City, contracted marriage[1] on June 29, 1992, solemnized by Judge Virginia Hofilena-Europa at the Municipal Trial Courts in Cities, Ecoland, Matina, Davao City. The marriage was registered at the Local Civil Registrar of Davao City under Registry No. 1495 on July 3, 1992.

On November 20, 2003, Agakhan Molok, then a member of the Philippine Army, died in General Santos City.

When respondent went to the Philippine Army office to claim the death benefits of her late husband, she discovered that there was another claimant, Rosemarie Salma Aragoncillo-Molok (petitioner), a resident of Poblacion, Pikit, Cotabato, who declared herself as the wife of Agakhan Molok by virtue of a Certificate of Marriage[2] executed on May 20, 1999 in

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[1] Annex "A" (Marriage Contract) of Amended Petition of Sity Aisa Barangai Molok, records, pp. 41-42.

[2] Annex "B", *id.* at 43.

Taguig, Metro Manila. The marriage, which was purportedly solemnized by Imam Ustadz Moha-imen Ulama under Muslim rites carried out at the Manila Golden Mosque and Cultural Center, Globo de Oro St., Quiapo, Manila,[3] was registered before the Shari'a District Court Muslim Civil Registrar of Zamboanga City under Registry No. 25901 on June 14, 2004.[4]

Upon inquiry, respondent found out that there was no record of the second marriage, per Certification[5] dated August 14, 2004 by Manila Golden Mosque and Cultural Center Administrator Rakman T. Ali, Al Haj. She also discovered that the solemnizing officer, Ustadz Moha-imen Ulama, never solemnized the supposed marriage of petitioner and Agakhan Molok, as stated in his Affidavit[6] dated May 4, 2004.

Respondent thus filed on October 17, 2004 a verified petition[7] "for cancellation of registration of the alleged marriage" of petitioner and Agakhan Molok before the Third Shari'a District Court of Zamboanga City, docketed as SPL. PROC. No. 01-04. The petition, which was later amended[8] by impleading the Shari'a District Court Registrar of Zamboanga City and OIC Civil Registrar Duraida A. Abdulbakie, prayed that, after notice and hearing:

1. the registration of the alleged marriage between **COL. AGAKHAN M. MOLOK** and the Respondent, **ROSEMARIE SALMA ARAGONCILLO**, be cancelled and rendered of no effect, such being done to deceive the government of partaking of the claims of the heirs of **COL. AGAKHAN M. MOLOK**, aside from being registered seven (7) months after the latter's death;

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[3] Annex "C", *id.* at 44.

[4] Decision dated June 28, 2005 of the Shari'a District Court, *id.* 152-153.

[5] *Id.* at 46.

[6] *Id.* at 47.

[7] *Id.* at 1-15.

[8] *Id.* at 34, 37-52.

2. the public respondents be ordered to rectify the records of the registry of marriages by canceling the registry of the marriage between COL. MOLOK and the private respondent;

3. the [private] Respondent be made to pay for the costs of this suit, attorney's fees incurred by the Petitioner in the filing of this case in the amount of THIRTY THOUSAND (₱30,000.00) PESOS, and appearance fees;

Such other relief and remedies as are just and equitable under the premises are also prayed for.

x x x (emphasis and underscoring supplied)

Finding the petition to be sufficient in form and substance, the trial court, by Order[9] of January 24, 2005, (1) set the hearing of the petition on March 28, 2005 at 8:30 in the morning at the Third Floor, Hall of Justice, Sta. Barbara, Zamboanga City; (2) ordered all persons who oppose it to appear and show cause why the petition shall not be granted; and (3) ordered the publication of the Order once a week for three consecutive weeks in a newspaper of general circulation in Zamboanga City, at the expense of respondent, and the posting of copies of said Order in three conspicuous public places for the information of all concerned.

After notices of the January 24, 2005 Order were sent to the parties,[10] petitioner sent a letter[11] dated February 18, 2005 addressed to the Clerk of Court, Shari'a District Court, Zamboanga City, wherein she manifested her opposition to the grant of respondent's petition.

Petitioner later filed before the trial court a "Manifestation (With prayer for reconsideration of the January 25 [should be 24], 2005 Order)"[12] dated March 16, 2005 which reads:

x x x x x x x x x

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[9] *Id.* 69-71.

[10] Certification by the Process Server, *id.* at 73, 75.

[11] *Id.* at 78.

[12] *Id.* at 83-84.

Respondent alleges that:

She has **not received any copy of the petition** and the summons requiring her to submit an Answer thereto;

Unless she is furnished with the copy of the petition and its exhibits, respondent could not file a responsive pleading in accordance with the Rules;

It is only upon the filing of an Answer that the issues can be joined.

WHEREFORE, respondent prays that an Order issue**:**

a. **Directing the Clerk of Court to furnish the respondent with the copy of the Petition together with its exhibits**;

b. **Setting aside the January 24, 2005 Order of the Court and require the respondent [to] file … responsive pleading and/or comments so that issues can be joined**;

c. Other relief.

Respectfully submitted.

x x x. (emphasis and underscoring supplied)

The trial court, however, did not act on petitioner's Manifestation (With prayer for reconsideration of the January 2[4], 2005 Order).

During the scheduled hearing of the petition on March 28, 2005, only respondent and her counsel Atty. Hamid A. Barra appeared. Evidence showing compliance with the jurisdictional requirements of publication of the January 24, 2005 Order[13] and posting of notices[14] was thereupon presented and respondent took the witness stand in support of her petition.

By Decision[15] of June 28, 2005, the trial court found for respondent. It noted that petitioner "has not filed any formal

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[13] Exhibits "I" (publisher's affidavit of publication), "J" (first publication dated Feb. 26, 2005), "K" (second publication dated March 5, 2005), and "L" (third publication dated March 12, 2005), *id.* at 79, 80, 81, 82.

[14] Certification of Posting by the Process Server, *id.* at 76.

[15] *Id.* at 152-155.

opposition" to petitioner's petition pursuant to Section 5, Rule 108 which provides:

> Section 5. *Opposition*.– The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last day of publication of such notice, file his opposition thereto.

Thus, the Shari'a District Court disposed:

> WHEREFORE, foregoing considered the Muslim marriage between the respondent Rosemarie Salma Aragoncillo and the late Col. Agakhan M. Molok covered by Certificate of Marriage issued by the Third Shari'a District Court Muslim Civil Registrar of Zamboanga City under Registry No. 25901, dated June 14, 2004, is hereby **DECLARED** as **NULL** and **VOID**, inexistent and without any legal effect whatsoever. The Third Shari'a District Court Muslim Civil Registrar of Zamboanga City is hereby **ORDERED** to **CANCEL** from its registration book of marriage certificate Marriage Registry No. 25901, dated June 14, 2004, by and between Rosemarie Salma Aragoncillo and Agakhan M. Molok.
>
> SO ORDERED.[16] (emphasis supplied)

Petitioner filed a motion for reconsideration[17] which the trial court, by Order of August 1, 2005, set for hearing on September 1, 2005.[18] No hearing was held on that date, however, as it was a non-working Muslim holiday. The clerk of the trial court then advised petitioner to wait for a notice of resetting of the hearing.[19]

It appears that no notice of resetting of petitioner's motion for reconsideration was issued. It turned out that petitioner's motion for reconsideration of the decision was denied by Order of July 25, 2005[20] or *before* the *originally scheduled* hearing thereof on September 1, 2005.

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[16] *Id.* at 154-155.

[17] *Id.* at 166-170.

[18] *Id.* at 174-175.

[19] Par. No. 7 of the present petition, *rollo*, p. 14.

[20] Records, pp. 178-179.

Hence, this direct recourse to this Court via petition for review on *certiorari*, contending that, among other things, the trial court, in rendering its decision solely on the basis of respondent's petition, violated her constitutional right to due process.

Respondent, in her Comment, counters that petitioner was afforded due process since she was notified of the hearing on the petition as she, in fact, prayed for a reconsideration of the January 24, 2005 Order setting the petition for hearing, and had "manifested her opposition thereto." Her failure to file her opposition, respondent concludes, was thus unwarranted.

The Court finds that petitioner was indeed denied her right to due process.

Petitioner was merely notified of the hearing of respondent's petition on March 28, 2005 by Order of January 24, 2005. Neither respondent nor the trial court furnished petitioner with a copy of respondent's petition and its annexes, despite her plea therefor.

Indeed, when the trial court ignored her plea, through her "Manifestation (With prayer for reconsideration of the January 2[4], 2005 Order)" dated March 16, 2005, that she be furnished with a copy of respondent's petition and its annexes so that she could file her opposition thereto, petitioner was denied her day in court. Why petitioner's plea was unheeded, no reason was proffered by the trial court. It need not be underlined that her plea was meritorious, given the *adversarial* nature of the proceedings under Rule 108.

In raising the issue of denial of due process in petitioner's motion for reconsideration of the decision, the trial court, by Order of July 25, 2005,[21] did not specifically address the same. Oddly, said Order was issued on *July 25, 2005*, when petitioner's motion for reconsideration was set for hearing yet on *September 1, 2005*, albeit no hearing was held since; as stated earlier, it was a non-working Muslim holiday, and

[21] *Id.* at 178-179.

despite the Clerk of Court's assurance that petitioner would be advised of the date of resetting of the hearing.

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Order dated June 28, 2005 and July 25, 2005, respectively, of the Third Shari'a District Court in Spl. Proc. No. 01-04 are *REVERSED* and *SET ASIDE*. This case is *REMANDED* to said court for further proceedings.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170166. April 6, 2011]

JOE A. ROS and ESTRELLA AGUETE, *petitioners, vs.* **PHILIPPINE NATIONAL BANK-LAOAG BRANCH,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; CONJUGAL PARTNERSHIP; CONJUGAL PROPERTY; CANNOT BE ALIENATED OR ENCUMBERED BY THE HUSBAND WITHOUT THE CONSENT, EXPRESS OR IMPLIED, OF THE WIFE.— The Civil Code was the applicable law at the time of the mortgage. The subject property is thus considered part of the conjugal partnership of gains. x x x There is no doubt that the subject property was acquired during Ros and Aguete's marriage. Ros and Aguete were married on 16 January 1954, while the subject property was acquired in 1968. There is also no doubt that Ros encumbered the subject property when he mortgaged it for ₱115,000.00 on 23 October 1974. PNB Laoag does not doubt that Aguete, as evidenced by her signature, consented

to Ros' mortgage to PNB of the subject property. On the other hand, Aguete denies ever having consented to the loan and also denies affixing her signature to the mortgage and loan documents. The husband cannot alienate or encumber any conjugal real property without the consent, express or implied, of the wife. Should the husband do so, then the contract is voidable. Article 173 of the Civil Code allows Aguete to question Ros' encumbrance of the subject property. However, the same article does not guarantee that the courts will declare the annulment of the contract. Annulment will be declared only upon a finding that the wife did not give her consent. In the present case, we follow the conclusion of the appellate court and rule that Aguete gave her consent to Ros' encumbrance of the subject property.

2. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF EVIDENCE; PUBLIC DOCUMENTS; EVERY INSTRUMENT DULY ACKNOWLEDGED AND CERTIFIED AS PROVIDED BY LAW MAY BE PRESENTED IN EVIDENCE WITHOUT FURTHER PROOF.—** The documents disavowed by Aguete are acknowledged before a notary public, hence they are public documents. Every instrument duly acknowledged and certified as provided by law may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved. The execution of a document that has been ratified before a notary public cannot be disproved by the mere denial of the alleged signer. PNB was correct when it stated that petitioners' omission to present other positive evidence to substantiate their claim of forgery was fatal to petitioners' cause. Petitioners did not present any corroborating witness, such as a handwriting expert, who could authoritatively declare that Aguete's signatures were really forged.

3. **CIVIL LAW; FAMILY CODE; CONJUGAL PARTNERSHIP; SHALL BE LIABLE FOR DEBTS CONTRACTED BY THE HUSBAND FOR AND IN THE EXERCISE OF THE INDUSTRY OR PROFESSION BY WHICH HE CONTRIBUTES TO THE SUPPORT OF THE FAMILY.—** The application for loan shows that the loan would be used

exclusively "for additional working [capital] of buy & sell of garlic & virginia tobacco." In her testimony, Aguete confirmed that Ros engaged in such business, but claimed to be unaware whether it prospered. Aguete was also aware of loans contracted by Ros, but did not know where he "wasted the money." Debts contracted by the husband for and in the exercise of the industry or profession by which he contributes to the support of the family cannot be deemed to be his exclusive and private debts. For this reason, we rule that Ros' loan from PNB redounded to the benefit of the conjugal partnership. Hence, the debt is chargeable to the conjugal partnership.

APPEARANCES OF COUNSEL

Valdez Maulit & Associates for petitioners.
Chief Legal Counsel (PNB) for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 170166 is a petition for review[1] assailing the Decision[2] promulgated on 17 October 2005 by the Court of Appeals (appellate court) in CA-G.R. CV No. 76845. The appellate court granted the appeal filed by the Philippine National Bank – Laoag Branch (PNB). The appellate court reversed the 29 June 2001 Decision of Branch 15 of the Regional Trial Court of Laoag City (trial court) in Civil Case No. 7803.

The trial court declared the Deed of Real Estate Mortgage executed by spouses Jose A. Ros[3] (Ros) and Estrella Aguete

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 26-36. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eliezer R. De Los Santos and Jose C. Reyes, Jr., concurring.

[3] Ros passed away on 26 September 1999. He was substituted by Aguete and their ten children: Joe John, Prospero, Sonia Jacinta, Rossano, Luisito, Pilar Estrella, Leoncio, Geraldine and Donato Juan, who are all surnamed Ros, and Ingrid Ros-Bautista. *Id.* at 10.

(Aguete) (collectively, petitioners), as well as the subsequent foreclosure proceedings, void. Aside from payment of attorney's fees, the trial court also ordered PNB to vacate the subject property to give way to petitioners' possession.

The Facts

The appellate court narrated the facts as follows:

> On January 13, 1983, spouses Jose A. Ros and Estrella Aguete filed a complaint for the annulment of the Real Estate Mortgage and all legal proceedings taken thereunder against PNB, Laoag Branch before the Court of First Instance, Ilocos Norte docketed as Civil Case No. 7803.
>
> The complaint was later amended and was raffled to the Regional Trial Court, Branch 15, Laoag City.
>
> The averments in the complaint disclosed that plaintiff-appellee Joe A. Ros obtained a loan of ₱115,000.00 from PNB Laoag Branch on October 14, 1974 and as security for the loan, plaintiff-appellee Ros executed a real estate mortgage involving a parcel of land – Lot No. 9161 of the Cadastral Survey of Laoag, with all the improvements thereon described under Transfer Certificate of Title No. T-9646.
>
> Upon maturity, the loan remained outstanding. As a result, PNB instituted extrajudicial foreclosure proceedings on the mortgaged property. After the extrajudicial sale thereof, a Certificate of Sale was issued in favor of PNB, Laoag as the highest bidder. After the lapse of one (1) year without the property being redeemed, the property was consolidated and registered in the name of PNB, Laoag Branch on August 10, 1978.
>
> Claiming that she (plaintiff-appellee Estrella Aguete) has no knowledge of the loan obtained by her husband nor she consented to the mortgage instituted on the conjugal property – a complaint was filed to annul the proceedings pertaining to the mortgage, sale and consolidation of the property – interposing the defense that her signatures affixed on the documents were forged and that the loan did not redound to the benefit of the family.
>
> In its answer, PNB prays for the dismissal of the complaint for lack of cause of action, and insists that it was plaintiffs-appellees' own acts [of] omission/connivance that bar them from recovering

the subject property on the ground of estoppel, laches, abandonment and prescription.[4]

The Trial Court's Ruling

On 29 June 2001, the trial court rendered its Decision[5] in favor of petitioners. The trial court declared that Aguete did not sign the loan documents, did not appear before the Notary Public to acknowledge the execution of the loan documents, did not receive the loan proceeds from PNB, and was not aware of the loan until PNB notified her in 14 August 1978 that she and her family should vacate the mortgaged property because of the expiration of the redemption period. Under the Civil Code, the effective law at the time of the transaction, Ros could not encumber any real property of the conjugal partnership without Aguete's consent. Aguete may, during their marriage and within ten years from the transaction questioned, ask the courts for the annulment of the contract her husband entered into without her consent, especially in the present case where her consent is required. The trial court, however, ruled that its decision is without prejudice to the right of action of PNB to recover the amount of the loan and its interests from Ros.

The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. DECLARING the Deed of Real Estate Mortgage (Exhibit "C") and the subsequent foreclosure proceedings conducted thereon NULL and VOID;

2. ORDERING the Register of Deeds of the City of Laoag to cancel TCT No. T-15276 in the name of defendant PNB and revert the same in the name of plaintiffs spouses Joe Ros and Estrella Aguete;

3. ORDERING defendant to vacate and turnover the possession of the premises of the property in suit to the plaintiffs; and

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

[5] *Id.* at 37-46.

4. ORDERING defendant to pay plaintiffs attorney's fee and litigation expenses in the sum of TEN THOUSAND (₱10,000.00) PESOS.

No pronouncement as to costs.

SO ORDERED.[6]

PNB filed its Notice of Appeal[7] of the trial court's decision on 13 September 2001 and paid the corresponding fees. Petitioners filed on the same date a motion for execution pending appeal,[8] which PNB opposed.[9] In their comment to the opposition[10] filed on 10 October 2001, petitioners stated that at the hearing of the motion on 3 October 2001, PNB's lay representative had no objection to the execution of judgment pending appeal. Petitioners claimed that the house on the subject lot is dilapidated, a danger to life and limb, and should be demolished. Petitioners added that they obliged themselves to make the house habitable at a cost of not less ₱50,000.00. The repair cost would accrue to PNB's benefit should the appellate court reverse the trial court. PNB continued to oppose petitioners' motion.[11]

In an Order[12] dated 8 May 2002, the trial court found petitioners' motion for execution pending appeal improper because petitioners have made it clear that they were willing to wait for the appellate court's decision. However, as a court of justice and equity, the trial court allowed petitioners to occupy the subject property with the condition that petitioners would voluntarily vacate the premises and waive recovery of improvements introduced should PNB prevail on appeal.

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[6] *Id.* at 46.

[7] Records, p. 346.

[8] *Id.* at 348.

[9] *Id.* at 350-355.

[10] *Id.* at 373-375.

[11] *Id.* at 385-388.

[12] *Id.* at 392-393.

The Appellate Court's Ruling

On 17 October 2005, the appellate court rendered its Decision[13] and granted PNB's appeal. The appellate court reversed the trial court's decision, and dismissed petitioners' complaint.

The appellate court stated that the trial court concluded forgery without adequate proof; thus it was improper for the trial court to rely solely on Aguete's testimony that her signatures on the loan documents were forged. The appellate court declared that Aguete affixed her signatures on the documents knowingly and with her full consent.

Assuming *arguendo* that Aguete did not give her consent to Ros' loan, the appellate court ruled that the conjugal partnership is still liable because the loan proceeds redounded to the benefit of the family. The records of the case reveal that the loan was used for the expansion of the family's business. Therefore, the debt obtained is chargeable against the conjugal partnership.

Petitioners filed the present petition for review before this Court on 9 December 2005.

The Issues

Petitioners assigned the following errors:

I. The Honorable Court of Appeals erred in not giving weight to the findings and conclusions of the trial court, and in reversing and setting aside such findings and conclusions without stating specific contrary evidence;

II. The Honorable Court of Appeals erred in declaring the real estate mortgage valid;

III. The Honorable Court of Appeals erred in declaring, without basis, that the loan contracted by husband Joe A. Ros with respondent Philippine National Bank – Laoag redounded to the benefit of his family, aside from the fact that such had not been raised by respondent in its appeal.[14]

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[13] *Rollo*, pp. 26-36.

[14] *Id.* at 14.

The Court's Ruling

The petition has no merit. We affirm the ruling of the appellate court.

The Civil Code was the applicable law at the time of the mortgage. The subject property is thus considered part of the conjugal partnership of gains. The pertinent articles of the Civil Code provide:

Art. 153. The following are conjugal partnership property:
(1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
(2) That which is obtained by the industry, or work or as salary of the spouses, or of either of them;
(3) The fruits, rents or interest received or due during the marriage, coming from the common property or from the exclusive property of each spouse.

Art. 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.

Art. 161. The conjugal partnership shall be liable for:
(1) All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership;
(2) Arrears or income due, during the marriage, from obligations which constitute a charge upon property of either spouse or of the partnership;
(3) Minor repairs or for mere preservation made during the marriage upon the separate property of either the husband or the wife; major repairs shall not be charged to the partnership;
(4) Major or minor repairs upon the conjugal partnership property;
(5) The maintenance of the family and the education of the children of both husband and wife, and of legitimate children of one of the spouses;
(6) Expenses to permit the spouses to complete a professional, vocational or other course.

Art. 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same.

Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs after the dissolution of the marriage may demand the value of the property fraudulently alienated by the husband.

There is no doubt that the subject property was acquired during Ros and Aguete's marriage. Ros and Aguete were married on 16 January 1954, while the subject property was acquired in 1968.[15] There is also no doubt that Ros encumbered the subject property when he mortgaged it for ₱115,000.00 on 23 October 1974.[16] PNB Laoag does not doubt that Aguete, as evidenced by her signature, consented to Ros' mortgage to PNB of the subject property. On the other hand, Aguete denies ever having consented to the loan and also denies affixing her signature to the mortgage and loan documents.

The husband cannot alienate or encumber any conjugal real property without the consent, express or implied, of the wife. Should the husband do so, then the contract is voidable.[17] Article 173 of the Civil Code allows Aguete to question Ros' encumbrance of the subject property. However, the same article does not guarantee that the courts will declare the annulment of the contract. Annulment will be declared only upon a finding

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[15] TSN, 8 October 1986, pp. 15-17.

[16] *Rollo*, p. 55.

[17] *Vera-Cruz v. Calderon*, G.R. No. 160748, 14 July 2004, 434 SCRA 534 citing *Heirs of Ignacia Aguilar-Reyes v. Spouses Mijares*, G.R. No. 143826, 28 August 2000, 410 SCRA 97.

that the wife did not give her consent. In the present case, we follow the conclusion of the appellate court and rule that Aguete gave her consent to Ros' encumbrance of the subject property.

The documents disavowed by Aguete are acknowledged before a notary public, hence they are public documents. Every instrument duly acknowledged and certified as provided by law may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved.[18] The execution of a document that has been ratified before a notary public cannot be disproved by the mere denial of the alleged signer.[19] PNB was correct when it stated that petitioners' omission to present other positive evidence to substantiate their claim of forgery was fatal to petitioners' cause.[20] Petitioners did not present any corroborating witness, such as a handwriting expert, who could authoritatively declare that Aguete's signatures were really forged.

A notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and it has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. Absent such, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the one contesting the same. Furthermore, an allegation of forgery must be proved by clear and convincing evidence, and whoever alleges it has the burden of proving the same.[21]

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[18] See Section 30 of Rule 132 of the Rules of Court.

[19] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, 10 February 2006, 482 SCRA 164, 175 citing *Sy Tiangco v. Pablo and Apao*, 59 Phil. 119, 122 (1933).

[20] CA *rollo*, p. 134.

[21] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, *supra* at 174-175 (citations omitted).

Ros himself cannot bring action against PNB, for no one can come before the courts with unclean hands. In their memorandum before the trial court, petitioners themselves admitted that Ros forged Aguete's signatures.

> Joe A. Ros in legal effect admitted in the complaint that the signatures of his wife in the questioned documents are forged, incriminating himself to criminal prosecution. If he were alive today, he would be prosecuted for forgery. This strengthens the testimony of his wife that her signatures on the questioned documents are not hers.
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> In filing the complaint, it must have been a remorse of conscience for having wronged his family; in forging the signature of his wife on the questioned documents; in squandering the ₱115,000.00 loan from the bank for himself, resulting in the foreclosure of the conjugal property; eviction of his family therefrom; and, exposure to public contempt, embarassment and ridicule.[22]

The application for loan shows that the loan would be used exclusively "for additional working [capital] of buy & sell of garlic & virginia tobacco."[23] In her testimony, Aguete confirmed that Ros engaged in such business, but claimed to be unaware whether it prospered. Aguete was also aware of loans contracted by Ros, but did not know where he "wasted the money."[24] Debts contracted by the husband for and in the exercise of the industry or profession by which he contributes to the support of the family cannot be deemed to be his exclusive and private debts.[25]

If the husband himself is the principal obligor in the contract, *i.e.*, he directly received the money and services to be used in or for his own business or his own profession, that contract falls

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[22] Records, p. 327.

[23] *Rollo,* p. 52.

[24] TSN, 8 October 1986, pp. 23-24.

[25] *Perez v. Lantin,* 132 Phil. 120 (1968) citing *Javier v. Osmeña*, 34 Phil. 336 (1916).

within the term "x x x obligations for the benefit of the conjugal partnership." Here, no actual benefit may be proved. It is enough that the benefit to the family is apparent at the signing of the contract. From the very nature of the contract of loan or services, the family stands to benefit from the loan facility or services to be rendered to the business or profession of the husband. It is immaterial, if in the end, his business or profession fails or does not succeed. Simply stated, where the husband contracts obligations on behalf of the family business, the law presumes, and rightly so, that such obligation will redound to the benefit of the conjugal partnership.[26]

For this reason, we rule that Ros' loan from PNB redounded to the benefit of the conjugal partnership. Hence, the debt is chargeable to the conjugal partnership.

WHEREFORE, we *DENY* the petition. The Decision of the Court of Appeals in CA-G.R. CV No. 76845 promulgated on 17 October 2005 is *AFFIRMED.* Costs against petitioners.

SO ORDERED.

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

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[26] *Ayala Investment & Development Corp. v. Court of Appeals*, G.R. No. 118305, 12 February 1998, 286 SCRA 272, 281-282.

[*] Designated additional member per Special Order No. 978 dated 30 March 2011.

FIRST DIVISION

[G.R. No. 171129. April 6, 2011]

ENRICO SANTOS, *petitioner, vs.* **NATIONAL STATISTICS OFFICE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; CONCLUSIVE PRESUMPTIONS; ESTOPPEL AGAINST TENANTS; A TENANT IS ESTOPPED FROM DENYING THE TITLE OF HIS LANDLORD AT THE TIME OF THE COMMENCEMENT OF THE LANDLORD-TENANT RELATION.— The conclusive presumption found in Sec. 2(b), Rule 131 of the Rules of Court known as *estoppel* against tenants provides as follows: "Sec. 2. *Conclusive presumptions.* – The following are instances of conclusive presumptions: x x x (b) The tenant is not permitted to deny the title of his landlord *at the time of the commencement of the relation of landlord and tenant* between them." It is clear from the above-quoted provision that "[w]hat a tenant is estopped from denying x x x is the title of his landlord at the time of the commencement of the landlord-tenant relation. If the title asserted is one that is alleged to have been acquired subsequent to the commencement of that relation, the presumption will not apply." Hence, "the tenant may show that the landlord's title has expired or been conveyed to another or himself; and he is not estopped to deny a claim for rent, if he has been ousted or evicted by title paramount."

2. ID.; ID.; ID.; ID.; ID.; INAPPLICABLE IN CASE AT BAR.— While petitioner appears to have already lost ownership of the property at the time of the commencement of the tenant-landlord relationship between him and respondent, the change in the nature of petitioner's title, as far as respondent is concerned, came only after the commencement of such relationship or during the subsistence of the lease. This is precisely because at the time of the execution of the second and third contracts of lease, respondent was still not aware of the transfer of ownership of the leased property to China Bank.

It was only in November 2003 or less than two months before the expiration of said contracts when respondent came to know of the same after it was notified by said bank. This could have been the reason why respondent did not anymore pay petitioner the rents for the succeeding months of December 2003 and January 2004. Thus, it can be said that there was a change in the nature of petitioner's title during the subsistence of the lease that the rule on estoppel against tenants does not apply in this case. Petitioner's reliance on said conclusive presumption must, therefore, necessarily fail since there was no error on the part of the CA when it entertained respondent's assertion of a title adverse to petitioner.

3. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT SUITS; THE ONLY ISSUE FOR RESOLUTION IS THE PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED, INDEPENDENT OF ANY CLAIM OF OWNERSHIP BY ANY OF THE PARTY LITIGANTS; EXCEPTION.— We also find untenable petitioner's argument that respondent cannot assert ownership of the property by a third person considering that China Bank, as such third person, is not a party to the ejectment case. As earlier said, a tenant in proper cases such as this, may show that the landlord's title has been conveyed to another. In order to do this, the tenant must essentially assert that title to the leased premises already belongs to a third person who need not be a party to the ejectment case. This is precisely what respondent was trying to do when it endeavored to establish that the property is now owned by China Bank. From the above discussion, it is not difficult to see that the question of possession is so intertwined with the question of ownership to the effect that the question of possession cannot be resolved without resolving the question of ownership. This is the reason why we are upholding the CA's resolution of the issue of ownership in this ejectment case. "It bears emphasizing that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants." However, "[i]n cases where defendant raises the question of ownership in the pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the court may proceed and resolve the issue of ownership but only for the purpose of determining the issue of possession. [Nevertheless], the disposition of the issue

of ownership is not final, as it may be the subject of separate proceeding[s] specifically brought to settle the issue. Hence, the fact that there is a pending case between petitioner and China Bank respecting the ownership of the property does not preclude the courts to rule on the issue of ownership in this case.

4. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; IN CIVIL CASES, THE BURDEN OF PROOF IS ON THE PLAINTIFF TO ESTABLISH HIS CASE BY A PREPONDERANCE OF EVIDENCE.— Paragraph 3 of the Complaint for Unlawful Detainer states that petitioner is the registered owner of the property located at No. 49, National Road, Barrio Bagbaguin, Sta. Maria, Bulacan. It is in fact by virtue of this alleged ownership that he entered into contracts of lease with respondent and was ejecting the latter by reason of the expiration of said contracts. However, we note that petitioner, as plaintiff in the Complaint for Unlawful Detainer, failed to discharge his burden of showing that he indeed owned the property. "In civil cases, the burden of proof is on the plaintiff to establish his case by a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not on the weakness of that of his opponent."

5. CIVIL LAW; LAND REGISTRATION; TORRENS CERTIFICATE OF TITLE; AN EVIDENCE OF INDEFEASIBLE TITLE OF PROPERTY IN FAVOR OF THE PERSON IN WHOSE NAME THE TITLE APPEARS.— [R]espondent has satisfactorily shown that title to the property has already been conveyed to China Bank. It submitted the following documents: (1) the Promissory Note executed by petitioner and his spouse in favor of China Bank for a loan of ₱20 million and the (Real Estate) Mortgage over the subject property; (2) the Petition for Extrajudicial Foreclosure of said Real Estate Mortgage; (3) the Notice of Auction Sale By Notary Public, Certificate of Posting, Affidavit of Publication and Certificate of Sale in favor of China Bank, all in connection with the extrajudicial foreclosure sale of the leased premises; (4) the Affidavit of Consolidation executed by China Bank's Vice-President to inform the Registry of Deeds of Meycauayan,

Bulacan that the one-year period of redemption has expired without petitioner redeeming the property and to request said office to issue the corresponding TCT under the bank's name; and (5) TCT No. T-370128 (M) issued on August 21, 2000 in the name of China Bank covering the leased property. Said documents, particularly TCT No. T-370128 (M), undeniably show that China Bank is the owner of the property and not petitioner. "As a matter of law, a Torrens Certificate of Title is evidence of indefeasible title of property in favor of the person in whose name the title appears. The title holder is entitled to all the attributes of ownership of the property, including possession, subject only to limits imposed by law." Not being the registered titleholder, we hold that petitioner does not have a better right of possession over the property as against respondent who is in actual possession thereof and who claims to derive its right of possession from the titleholder, China Bank, to whom it pays rents for its use. Hence, petitioner's action for unlawful detainer must fail. This being settled, it is obvious that petitioner is likewise not entitled to payment of damages for the fair rental value or reasonable compensation for the use and occupation of the property.

APPEARANCES OF COUNSEL

Mauricio Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The lessee in this case resists ejectment by the lessor on the ground that the leased property has already been foreclosed and is now owned by a third person.

This Petition for Review on *Certiorari* assails the Decision[1] dated September 6, 2005 of the Court of Appeals (CA) in CA-

[1] CA *rollo*, pp. 125-133; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Rebecca De Guia-Salvador and Rosalinda Asuncion-Vicente.

G.R. SP No. 89464 which recalled and set aside the Decision[2] dated April 1, 2005 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 15 in Civil Case No. 651-M-04. Likewise assailed is the CA's Resolution[3] dated January 3, 2006 denying the Motion for Reconsideration thereto.

Factual Antecedents

On February 10, 2004, petitioner Enrico Santos filed a Complaint[4] for Unlawful Detainer in the Municipal Trial Court (MTC) of Sta. Maria, Bulacan. He claimed therein that he is the registered owner of the property located at No. 49, National Road, Barrio Bagbaguin, Sta. Maria, Bulacan. On January 2, 1998, he entered into a Contract of Lease[5] with respondent National Statistics Office for the lease of 945 square meters (sq m) of the first floor of the structure on said property for a monthly rental of ₱74,000.00. Subsequently, the parties agreed to renew the lease for a period of one year from January 1, 2003 to December 31, 2003, covering a bigger area of the same floor for an increased monthly rental of ₱103,635.00.[6] As the area leased by respondent was not sufficient for its use, petitioner and respondent again entered into another Contract of Lease[7] dated September 11, 2003 which covered an additional space for a monthly rental of ₱45,000.00. For failing to pay despite demand the rentals for the months of December 2003 and January 2004 in the total amount of ₱297,270.00, and for its refusal to vacate the property even after the termination of the lease contracts on December 31, 2003, petitioner sent respondent a formal demand[8] for the

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[2] Records, pp.167-169; penned by Judge Alexander P. Tamayo.

[3] CA *rollo,* p.158.

[4] Records, pp. 1-5.

[5] *Id.* at 6-12.

[6] *Id.* at 13-17.

[7] *Id.* at 18-23.

[8] *Id.* at 24.

latter to pay its unpaid monthly rentals and to vacate the property. Notwithstanding receipt, respondent still refused to pay and to vacate the property. Hence, the complaint.

In its Answer,[9] respondent through the Office of the Solicitor General (OSG) alleged that petitioner and his wife obtained a loan[10] from China Banking Corporation (China Bank) in the amount of ₱20 million, the payment of which was secured by a Real Estate Mortgage[11] constituted over the subject property covered by Transfer Certificate of Title (TCT) No. T-95719(M). It claimed that when petitioner entered into a contract of lease with it in 1998, he did not inform respondent of the existence of said loan. When petitioner failed to pay his obligation with China Bank, the property was eventually sold in an extrajudicial foreclosure sale where said bank emerged as the highest bidder. Since petitioner likewise failed to redeem the property within the redemption period, title to the same was consolidated in favor of China Bank and TCT No. T-370128(M) was issued in its name on August 21, 2000. Despite this and again without informing respondent, petitioner misrepresented himself as still the absolute owner of the subject property and entered into the second and third contracts of lease with respondent in February and September 2003. According to respondent, it was only in November 2003 that it knew of the foreclosure of the subject property when it received a letter[12] from China Bank informing it that as early as August 2000, title to the property had already been effectively consolidated in the name of the bank. Hence, China Bank advised respondent that as the new and absolute owner of the subject property, it is entitled to the rental payments for the use and occupancy of the leased premises from the date of consolidation. Petitioner having ceased to be the owner of said property, respondent believed that the second and third contracts of lease it entered with him had ceased to be in effect.

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[9] *Id.* at 26-37.

[10] See the corresponding Promissory Note dated January 31, 1997, *id.* at 39.

[11] *Id.* at 40-41.

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

Hence, petitioner has no legal right to demand that respondent pay him said rentals and vacate the leased premises. Conversely, respondent has no legal obligation to pay to petitioner the rentals for the use and occupancy of the subject property. Moreover, petitioner failed to exhaust administrative remedies as there was no indication that he filed a money claim before the Commission on Audit (COA) as required by Act No. 3083[13] as amended by Presidential Decree (P.D.) No. 1445.[14] Lastly, respondent alleged that petitioner is without any legal personality to institute the complaint because he is neither the owner, co-owner, legal representative or assignee of China Bank, landlord or a person entitled to the physical possession of the subject property. By way of counterclaim, respondent asserted that petitioner is obligated under the law and the equitable principle of unjust enrichment to return to respondent all rental payments received, with legal interests, from August 2000 to November 2003 in the total amount of ₱4,113,785.00.

Ruling of the Municipal Trial Court

The MTC rendered its Decision[15] on September 6, 2004. It held that while it can provisionally resolve the issue of ownership as raised by respondent, it did not do so because of the latter's admission that it originally leased the subject property from petitioner. According to said court, when respondent admitted that it was a lessee of the premises owned by petitioner, it took away its right to question petitioner's title and ownership thereof. The MTC then reiterated the well settled rule that a tenant cannot, in an action involving the possession of leased premises, controvert the title of his landlord. As the evidence showed that respondent was no longer paying rents in violation of its obligation under the second and third contracts of lease, and since said contracts already expired and no new contract

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[13] AN ACT DEFINING THE CONDITIONS UNDER WHICH THE GOVERNMENT OF THE PHILIPPINE ISLANDS MAY BE SUED. Approved on March 16, 1923.

[14] GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

[15] Records, pp. 131-133.

was entered into by the parties, the MTC declared respondent a deforciant lessee which should be ejected from the property. The dispositive portion of the MTC Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to:
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> 1. Vacate the premises known as No. 49 National Road, Bagbaguin, Santa Maria, Bulacan and peacefully surrender possession thereof to the plaintiff;
>
> 2. Pay the plaintiff rental arrearages amounting to Two Hundred Ninety Seven Thousand Two Hundred Seventy Pesos (₱297,270.00) for the period up to January 2004;
>
> 3. Pay the plaintiff the monthly amount of Seventy Four Thousand Pesos (₱74,000.00) from February 2004 up to the time that it finally vacates the subject premises;
>
> 4. Pay the plaintiff the amount of Thirty Thousand Pesos (₱30,000.00) as and by way of attorney's fees, and
>
> 5. Cost of the suit.
>
> SO ORDERED.[16]

Hence, respondent appealed to the RTC.

Ruling of the Regional Trial Court

Respondent faulted the MTC in not resolving the issue of ownership in order to determine who has the better right of possession. It emphasized that it is not an ordinary entity which may be compelled to pay under private contracts. As an agency of the government tasked in generating general purpose statistics, it is bound by government auditing rules to make payments only for validly executed contracts with persons lawfully entitled thereto. Thus, it is necessary to ascertain the ownership of the subject property in order to determine the person lawfully entitled to the rental payments. And as it is clear in this case that title to the property had already been consolidated in the

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[16] *Id.* at 133.

name of China Bank, respondent properly paid the rentals to said bank. Respondent argued that as between petitioner, who had ceased to have legal title to the property, and itself, which continuously pays rentals to China Bank, it is the one which has the better right of possession. In addition, respondent insisted that petitioner should return the amount of ₱4,113,785.00 wrongfully paid to him, with legal interest, until fully paid.

On the other hand, petitioner countered that even if respondent is a government agency, it cannot be permitted to deny his title over the property, he being the lessor of the same. To support this, he cited Section 2(b), Rule 131 of the Rules of Court[17] and Article 1436 of the Civil Code.[18] Petitioner thus prayed that the RTC affirm in *toto* the assailed MTC Decision.

In its Decision[19] dated April 1, 2005, the RTC agreed with the MTC's declaration that respondent is a deforciant lessee which should be ejected from the leased premises. This was in view of the settled rule that the fact of lease and the expiration of its terms are the only elements in an action for ejectment, which it found to have been established in this case. According to said court, a plaintiff need not prove his ownership and defendant cannot deny it. If defendant denies plaintiff's ownership, he raises a question which is unessential to the action. The RTC further held that if there was an issue of ownership, it is a matter between China Bank and petitioner to settle in an appropriate proceeding. Hence, the RTC found the appeal to be without merit, *viz*:

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[17] Sec. 2. *Conclusive presumptions.* – The following are instances of conclusive presumptions:

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(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

[18] Art. 1436. A lessee or a bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor.

[19] Records, pp. 167-169.

WHEREFORE, premises [considered], the assailed Decision of the Municipal Trial Court of Sta. Maria, Bulacan, is hereby AFFIRMED.

SO ORDERED.[20]

Petitioner promptly moved for the issuance of a writ of execution.[21] This was, however, denied by the RTC[22] in view of the Temporary Restraining Order (TRO) issued by the CA through its May 5, 2005 Resolution[23] in CA-G.R. SP No. 89464 - the Petition for Review brought by respondent before said court.

Ruling of the Court of Appeals

Before the CA, respondent asserted that the RTC and MTC cannot turn a blind eye on the transfer of ownership of the subject property to China Bank. As petitioner fraudulently executed the last two lease contracts with respondent, he having entered into the same despite knowledge that ownership of the subject property had already passed on to China Bank, the rule that the lessee cannot deny the title of his landlord does not apply. This is because petitioner was no longer the owner of the leased premises at the time of the execution of the last two contracts. Respondent also believed that said contracts are void because to hold otherwise would be to condone the anomalous situation of a party paying rentals to one who is no longer the owner and who no longer has the right of possession over the leased property. It likewise insisted that it is entitled to recover the rentals paid to petitioner from the time ownership of the subject property was transferred to China Bank under the principle of *solutio indebiti*. Lastly, respondent emphasized that petitioner failed to first file a money claim before the COA.

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[20] *Id.* at 169.

[21] See petitioner's Motion for Execution, *id.* at 171-174.

[22] See RTC's Order dated May 23, 2005, *id.* at 288.

[23] CA *rollo*, pp. 89-90.

Petitioner, for his part, basically reiterated the arguments he raised before the RTC. In addition, he pointed out that the defense of ownership is being invoked by respondent on behalf of another party, China Bank. What respondent therefore would want the lower courts to do was to rule that the subject property is owned by another person even if said person is not a party to the ejectment case. To petitioner, this cannot be done by the lower courts, hence, there was no error on their part when they decided not to touch upon the issue of ownership.

It is noteworthy that before the petition was resolved, the CA first issued a Resolution[24] dated July 15, 2005 granting respondent's prayer for a Writ of Preliminary Injunction which enjoined the enforcement of the RTC's April 1, 2005 Decision. Thereafter, the CA proceeded to decide the case and thus issued a Decision[25] dated September 6, 2005.

In its Decision, the CA recognized the settled rule that a tenant, in an action involving the possession of the leased premises, can neither controvert the title of his landlord nor assert any rights adverse to that title, or set up any inconsistent right to change the relation existing between himself and his landlord. However, it declared that said doctrine is subject to qualification as enunciated in *Borre v. Court of Appeals*[26] wherein it was held that "[t]he rule on *estoppel* against tenants x x x does not apply if the landlord's title has expired, or has been conveyed to another, or has been defeated by a title paramount, subsequent to the commencement of lessor-lessee relationship." In view of this, the CA concluded that the RTC erred when it relied mainly on the abovementioned doctrine enunciated under Sec. 2(b), Rule 131 of the Rules of Court and skirted away from resolving the issue of ownership. The CA noted that respondent was able to prove that title to the subject property has already been effectively consolidated in the name of China Bank. Hence, it found petitioner to be in bad

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[24] *Id.* at 105-107.

[25] *Id.* at 125-133.

[26] 242 Phil. 345, 352 (1988).

faith and to have acted with malice in still representing himself to be the owner of the property when he entered into the second and third contracts of lease with respondent. Under these circumstances, the CA declared that respondent was justified in refusing to pay petitioner the rents and thus, the ejectment complaint against respondent states no cause of action.

In addition, the CA opined that there was no landlord-tenant relationship created between the parties because the agreements between them are void. The element of consent is wanting considering that petitioner, not being the owner of the subject property, has no legal capacity to give consent to said contracts. The CA, however, denied respondent's prayer for the return of the rentals it paid to petitioner by ratiocinating that to grant the same would be to effectively rule on the ownership issue rather than merely resolving it for the purpose of deciding the issue on possession.

The CA disposed of the case in this wise:

> IN VIEW OF ALL THE FOREGOING, the instant petition for review is GRANTED, the assailed decision is RECALLED and SET ASIDE, and a new one entered DISMISSING Civil Case No. 651-M-04 (MTC Civil Case No. 1708). No pronouncement as to costs.
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> SO ORDERED.[27]

Both parties moved for reconsideration[28] of the above Decision but were, however, unsuccessful as the CA denied their motions in a Resolution[29] dated January 3, 2006.

Undeterred, petitioner now comes to us through this Petition for Review on *Certiorari*.

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[27] CA *rollo*, p. 132.

[28] See petitioner's Motion for Reconsideration, *id*. at 134-136 and respondent's Motion for Partial Reconsideration, *id.* at 139-147.

[29] *Id.* at 158.

Issues

Petitioner raises the following issues:

I. Whether x x x the Honorable Court of Appeals erred in overturning the respective decisions of the RTC-Malolos City, Bulacan and MTC-Sta. Maria, Bulacan which both held that a lessor has the better right of possession over a realty.

II. Whether x x x the Honorable Court of Appeals - in resolving the issue of who between the lessor and the lessee has better possession of the premises known as No. 49, National Road, Bagbaguin, Sta. Maria, Bulacan – erred in delving on the issue of ownership in resolving the issues raised in C.A.-G.R. SP No. 89464.

III. Whether x x x the Honorable Court of Appeals erred in not awarding damages to the Petitioner, the lessor of the premises known as No. 49, National Road, Bagbaguin, Sta. Maria, Bulacan.[30]

The Parties' Arguments

Petitioner contends that the ruling in *Borre* does not apply to this case because here, there is nothing to show that his title to the subject property had expired, or had been conveyed to another, or had been defeated by a title paramount. In fact, petitioner informs this Court that the dispute between him and China Bank concerning the ownership of the subject property is still pending litigation before Branch 17 of RTC-Malolos, Bulacan. Hence, petitioner asserts that there are yet no factual and legal bases for the CA to rule that he lost his title over the property. Besides, petitioner believes that ownership is not an issue in actions for ejectment especially when the parties thereto are the landlord and tenant. Moreover, petitioner contends that based on *Fige v. Court of Appeals*,[31] respondent as lessee cannot be allowed to interpose a defense against him as lessor without the former first delivering to him the leased premises. Petitioner also claims that he is entitled to payment of damages in the form of fair rental value or reasonable compensation for the use and occupation of the property. In sum, petitioner wants this Court to reverse

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[30] *Rollo*, pp. 4-5.

[31] G.R. No. 107951, June 30, 1994, 233 SCRA 586, 590.

and set aside the assailed CA Decision and Resolution and to reinstate the respective Decisions of the MTC and RTC.

Respondent, for its part, negates petitioner's claim that he has not yet lost his title to the property by emphasizing that such title has already been effectively consolidated in the name of China Bank. And, considering that government auditing rules preclude respondent from paying rentals to a party not entitled thereto, it was proper for it to pay the same to the new owner, China Bank. Moreover, respondent imputes bad faith upon petitioner for not informing it of the change in ownership of the property and for still collecting rental payments despite such change. Thus, respondent prays that the petition be denied for lack of merit.

Our Ruling

We find no merit in the petition.

The conclusive presumption found in Sec. 2(b), Rule 131 of the Rules of Court known as *estoppel* against tenants provides as follows:

> Sec. 2. *Conclusive presumptions.* – The following are instances of conclusive presumptions:
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> x x x x x x x x x
>
> (b) The tenant is not permitted to deny the title of his landlord *at the time of the commencement of the relation of landlord and tenant* between them. (Emphasis supplied).

It is clear from the above-quoted provision that "[w]hat a tenant is estopped from denying x x x is the title of his landlord at the time of the commencement of the landlord-tenant relation. If the title asserted is one that is alleged to have been acquired subsequent to the commencement of that relation, the presumption will not apply."[32] Hence, "the tenant may show that the landlord's title has expired or been conveyed to another or himself; and

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[32] HERRERA, *REMEDIAL LAW,* Volume VI, 1999 Ed., p. 49.

he is not estopped to deny a claim for rent, if he has been ousted or evicted by title paramount."[33]

Thus, we declared in *Borre v. Court of Appeals*[34] that:

> The rule on estoppel against tenants is subject to a qualification. It does not apply if the landlord's title has expired, or has been conveyed to another, or has been defeated by a title paramount, subsequent to the commencement of lessor-lessee relationship [VII Francisco, The Revised Rules of Court in the Philippines 87 (1973)]. In other words, *if there was a change in the nature of the title of the landlord during the subsistence of the lease, then the presumption does not apply*. Otherwise, if the nature of the landlord's title remains as it was during the commencement of the relation of landlord and tenant, then estoppel lies against the tenant. (Emphasis supplied.)

While petitioner appears to have already lost ownership of the property at the time of the commencement of the tenant-landlord relationship between him and respondent, the change in the nature of petitioner's title, as far as respondent is concerned, came only after the commencement of such relationship or during the subsistence of the lease. This is precisely because at the time of the execution of the second and third contracts of lease, respondent was still not aware of the transfer of ownership of the leased property to China Bank. It was only in November 2003 or less than two months before the expiration of said contracts when respondent came to know of the same after it was notified by said bank. This could have been the reason why respondent did not anymore pay petitioner the rents for the succeeding months of December 2003 and January 2004. Thus, it can be said that there was a change in the nature of petitioner's title during the subsistence of the lease that the rule on estoppel against tenants does not apply in this case. Petitioner's reliance on said conclusive presumption must, therefore, necessarily fail since there was no error on the part

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[33] *Id.*; FRANCISCO, *BASIC EVIDENCE*, 1992 Ed., p. 35 citing 1 Jones on Evidence, pp. 530-532.

[34] *Supra* note 26 at 352.

of the CA when it entertained respondent's assertion of a title adverse to petitioner.

We also find untenable petitioner's argument that respondent cannot assert ownership of the property by a third person considering that China Bank, as such third person, is not a party to the ejectment case. As earlier said, a tenant in proper cases such as this, may show that the landlord's title has been conveyed to another. In order to do this, the tenant must essentially assert that title to the leased premises already belongs to a third person who need not be a party to the ejectment case. This is precisely what respondent was trying to do when it endeavored to establish that the property is now owned by China Bank.

From the above discussion, it is not difficult to see that the question of possession is so intertwined with the question of ownership to the effect that the question of possession cannot be resolved without resolving the question of ownership. This is the reason why we are upholding the CA's resolution of the issue of ownership in this ejectment case. "It bears emphasizing that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants."[35] However, "[i]n cases where defendant raises the question of ownership in the pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the court may proceed and resolve the issue of ownership but only for the purpose of determining the issue of possession. [Nevertheless], the disposition of the issue of ownership is not final, as it may be the subject of separate proceeding[s] specifically brought to settle the issue."[36] Hence, the fact that there is a pending case between petitioner and China Bank respecting the ownership of the property does not preclude the courts to rule on the issue of ownership in this case.

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[35] *Malabanan v. Rural Bank of Cabuyao, Inc.*, G.R. No. 163495, May 8, 2009, 587 SCRA 442, 447.

[36] *Dela Rosa v. Roldan*, G.R. No. 133882, September 5, 2006, 501 SCRA 34, 53.

Paragraph 3 of the Complaint for Unlawful Detainer states that petitioner is the registered owner of the property located at No. 49, National Road, Barrio Bagbaguin, Sta. Maria, Bulacan.[37] It is in fact by virtue of this alleged ownership that he entered into contracts of lease with respondent and was ejecting the latter by reason of the expiration of said contracts. However, we note that petitioner, as plaintiff in the Complaint for Unlawful Detainer, failed to discharge his burden of showing that he indeed owned the property. "In civil cases, the burden of proof is on the plaintiff to establish his case by a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not on the weakness of that of his opponent."[38] On the other hand, respondent has satisfactorily shown that title to the property has already been conveyed to China Bank. It submitted the following documents: (1) the Promissory Note[39] executed by petitioner and his spouse in favor of China Bank for a loan of ₱20 million and the (Real Estate) Mortgage[40] over the subject property; (2) the Petition for Extrajudicial Foreclosure of said Real Estate Mortgage;[41] (3) the Notice of Auction Sale By Notary Public, Certificate of Posting, Affidavit of Publication and Certificate of Sale in favor of China Bank,[42] all in connection with the extrajudicial foreclosure sale of the leased premises; (4) the Affidavit of Consolidation[43] executed by China Bank's Vice-President to inform the Registry of Deeds of Meycauayan, Bulacan that the one-year period of redemption has expired without petitioner redeeming the property and to request said office to issue the

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[37] Records, p. 1.

[38] *Umpoc v. Mercardo*, 490 Phil. 118, 135 (2005).

[39] Records, p. 95.

[40] *Id.* at 96.

[41] *Id.* at 99-100.

[42] *Id.* at 101-105.

[43] *Id.* at 107-108.

corresponding TCT under the bank's name; and (5) TCT No. T-370128 (M)[44] issued on August 21, 2000 in the name of China Bank covering the leased property. Said documents, particularly TCT No. T-370128 (M), undeniably show that China Bank is the owner of the property and not petitioner. "As a matter of law, a Torrens Certificate of Title is evidence of indefeasible title of property in favor of the person in whose name the title appears. The title holder is entitled to all the attributes of ownership of the property, including possession, subject only to limits imposed by law."[45] Not being the registered titleholder, we hold that petitioner does not have a better right of possession over the property as against respondent who is in actual possession thereof and who claims to derive its right of possession from the titleholder, China Bank, to whom it pays rents for its use. Hence, petitioner's action for unlawful detainer must fail. This being settled, it is obvious that petitioner is likewise not entitled to payment of damages for the fair rental value or reasonable compensation for the use and occupation of the property.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated September 6, 2005 and Resolution dated January 3, 2006 of the Court of Appeals in CA-G.R. SP No. 89464 are *AFFIRMED*.

SO ORDERED.

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

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[44] *Id.* at 106.

[45] *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 25-26.

THIRD DIVISION

[G.R. No. 171542. April 6, 2011]

ANGELITO P. MAGNO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, MICHAEL MONSOD, ESTHER LUZ MAE GREGORIO, GIAN CARLO CAJOLES, NENETTE CASTILLON, DONATO ENABE and ALFIE FERNANDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SANDIGANBAYAN; HAS EXCLUSIVE APPELATE JURISDICTION OVER RESOLUTIONS ISSUED BY THE REGIONAL TRIAL COURTS IN THE EXERCISE OF THEIR OWN ORIGINAL JURISDICTION OR OF THEIR APPELATE JURISDICTION; CASE AT BAR.— Presidential Decree (*PD*) No. 1606 created the Sandiganbayan. Section 4 thereof establishes the Sandiganbayan's jurisdiction x x x. This is clear: the Sandiganbayan has exclusive appellate jurisdiction over resolutions issued by RTCs in the exercise of their own original jurisdiction or of their appellate jurisdiction. x x x In the present case, the CA erred when it took cognizance of the petition for *certiorari* filed by Magno. While it is true that the interlocutory order issued by the RTC is reviewable by *certiorari*, the same was incorrectly filed with the CA. Magno should have filed the petition for *certiorari* with the Sandiganbayan, which has exclusive appellate jurisdiction over the RTC since the accused are public officials charged of committing crimes in their capacity as Investigators of the National Bureau of Investigation. The CA should have dismissed the petition outright. Since it acted without authority, we overrule the September 26, 2005 Amended Decision of the CA and the subsequent denial of Magno's motions for reconsideration.

2. ID.; ACTIONS; JURISDICTION; CONFERRED BY LAW, AND ANY JUDGMENT, ORDER OR RESOLUTION ISSUED WITHOUT JURISDICTION IS VOID AND CANNOT BE GIVEN ANY EFFECT.— There is no rule in procedural law

as basic as the precept that jurisdiction is conferred by law, and any judgment, order or resolution issued without it is void and cannot be given any effect. This rule applies even if the issue on jurisdiction was raised for the first time on appeal or even after final judgment.

3. ID.; ID.; PRINCIPLE OF ESTOPPEL; INAPPLICABLE IN CASE AT BAR.— The Ombudsman cannot rely on the principle of *estoppel* in this case since Magno raised the issue of jurisdiction before the CA's decision became final. Further, even if the issue had been raised only on appeal to this Court, the CA's lack of jurisdiction could still not be cured.

APPEARANCES OF COUNSEL

Wee Lim & Salas Law Firm for petitioner.
The Solicitor General for public respondent.
Sitoy Go & Go Associates for private respondents.

D E C I S I O N

BRION, *J.*:

Through a petition for review on *certiorari*,[1] petitioner Angelito P. Magno seeks the reversal of the Amended Decision of the Court of Appeals (*CA*), dated September 26, 2005[2] in "*People of the Philippines, et al. v. Hon. Augustine A. Vestil, Presiding Judge, RTC Mandaue City, Br. 56, et al.*" (docketed as CA-G.R. SP No. 79809), and its Resolution dated February 6, 2006[3] denying respondents' motion for reconsideration.[4] The assailed rulings denied the petition for *certiorari* filed under Rule 65 of the Rules of Court and upheld the ruling[5] of the Regional Trial

[1] Filed under Rule 45 of the Rules of Court, *rollo*, pp. 21-37.

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

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

[4] *Id.* at 115-121.

[5] *Id.* at 65-66.

Court (*RTC*) of Mandaue City, which precluded Atty. Adelino B. Sitoy from acting as private prosecutor in Criminal Case No. DU-10123.[6]

THE FACTUAL ANTECEDENTS

On May 14, 2003, the Office of the Ombudsman filed an information for multiple frustrated murder and double attempted murder against several accused, including Magno, who were public officers working under the National Bureau of Investigation.[7]

During the scheduled arraignment, Magno, in open court, objected to the formal appearance and authority of Atty. Sitoy, who was there as private prosecutor to prosecute the case for and on behalf of the Office of the Ombudsman.[8] The oral objection was reduced to writing on July 21, 2003 when Magno filed an opposition[9] before Branch 56 of the RTC of Mandaue City, citing the provisions of Section 31 of Republic Act (*RA*) No. 6770.[10]

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[6] *Id.* at 69-73.

[7] *Ibid.*; filed as Criminal Case No. DU-10123.

[8] *Id.* at 24.

[9] *Id.* at 74-76.

[10] **Section 31.** ***Designation of Investigators and Prosecutors.*** — The Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.

The Ombudsman and his investigators and prosecutors, whether regular members of his staff or designated by him as herein provided, shall have authority to administer oaths, to issue subpoena and subpoena *duces tecum*, to summon and compel witnesses to appear and testify under oath before them and/or bring books, documents and other things under their control, and to secure the attendance or presence of any absent or recalcitrant witness through application before the Sandiganbayan or before any inferior or superior court having jurisdiction of the place where the witness or evidence is found.

The Office of the Ombudsman submitted its comment,[11] while the accused submitted their joint opposition.[12] The respondents likewise submitted their comments to the opposition of the other co-accused.[13]

On September 25, 2003, the RTC issued an Order, ruling that "the Ombudsman is proper, legal and authorized entity to prosecute this case to the exclusion of any other entity/person other than those authorized under R.A. 6770."[14]

In open court, the Office of the Ombudsman moved for the reconsideration of the Order, which the RTC later denied in its October 1, 2003 Order.[15]

Proceedings before the CA

On October 13, 2003, the respondents, through the Ombudsman for the Visayas and Atty. Sitoy, filed **a petition for *certiorari* before the CA**.[16] They contended that the RTC committed a grave abuse of discretion in prohibiting the appearance of Atty. Sitoy as counsel for the private offended parties, as the Rules of Court expressly provides that a private offended party may intervene, by counsel, in the prosecution of offenses.[17]

Magno, in his comment[18] filed on December 15, 2003, insisted that what he questioned before the RTC was the appearance and authority of the private prosecutor to prosecute the case in behalf of the Ombudsman.[19] He stressed that while the Office

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[11] *Rollo,* pp. 77-80.

[12] *Id.* at 81-84.

[13] *Id.* at 85-94.

[14] *Id.* at 66.

[15] *Id.* at 67-68.

[16] *Id.* at 46-59.

[17] *Id.* at 52-56.

[18] *Id.* at 95-104.

[19] *Id.* at 100.

of the Ombudsman can designate prosecutors to assist in the prosecution of criminal cases, its authority in appointing, deputizing or authorizing prosecutors to prosecute cases is confined only to fiscals, state prosecutors and government lawyers. It does not extend to private practitioners/private prosecutors.[20] He further stressed that while the Order of the RTC states that the Office of the Ombudsman is the proper legal and authorized entity to prosecute the case, it did not affect the right to intervene personally, as the Office of the Ombudsman can take the cudgels for the private respondents in prosecuting the civil aspect of the case.[21]

On February 16, 2005, the CA, in its original Decision, declared that the private prosecutor may appear for the petitioner in the case, but only insofar as the prosecution of the civil aspect of the case is concerned.[22]

The respondents moved for the reconsideration[23] of the CA decision. On September 26, 2005, the CA amended its decision,[24] ruling that the private prosecutor may appear for the petitioner in Criminal Case No. DU-10123 to intervene in the prosecution of the offense charged in collaboration with any lawyer deputized by the Ombudsman to prosecute the case.[25]

Failing to obtain a reconsideration[26] of the amended CA decision, Magno elevated the dispute to this Court through the present petition for review on *certiorari*[27] filed under Rule 45 of the Rules of Procedure.

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[20] *Id.* at 101.

[21] *Id.* at 102.

[22] *Id.* at 11.

[23] *Id.* at 115-121.

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

[25] *Id.* at 43.

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

[27] *Id.* at 21-37.

PETITIONER'S ARGUMENTS

Magno submits that the CA did not have jurisdiction to entertain the petition for *certiorari*; the power to hear and decide that question is with the Sandiganbayan.[28] To support this contention, Magno invokes *Engr. Teodoto B. Abbot v. Hon. Judge Hilario I. Mapayo, etc., et al.*[29] where the Court held that the Sandiganbayan has the exclusive power to issue petitions for *certiorari* in aid of its appellate jurisdiction.[30]

Even if the Court were to set aside this procedural lapse, Magno adds, the private prosecutor cannot be allowed to intervene for the respondents as it would violate Section 31 of RA No. 6770.[31] Section 31 limits the Ombudsman's prerogative to designate prosecutors to fiscals, state prosecutors and government lawyers. It does not, Magno maintains, allow the Ombudsman to deputize private practitioners to prosecute cases for and on behalf of the Office of the Ombudsman.[32]

RESPONDENTS' ARGUMENTS

The Office of the Ombudsman, through the Office of the Special Prosecutor, submitted its memorandum on February 8, 2008. Substantively, the Ombudsman maintains that Atty. Sitoy may intervene in the case pursuant to Section 16, Rule 110 of the Rules of Court, which reads:

> Sec. 16. Intervention of the offended party in criminal action. Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense.

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[28] *Id.* at 28.

[29] G.R. No. 134102, July 6, 2000, 335 SCRA 265.

[30] *Rollo,* pp. 30-31.

[31] *Id.* at 32-35.

[32] *Id.* at 35.

The Ombudsman maintains that Section 31 of RA No. 6770 did not amend Section 16, Rule 110 of the Rules of Court.[33] Section 31 merely allows the Ombudsman to designate and deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution in certain cases.[34] The Ombudsman opines that the two provisions of law "are not diametrically opposed nor in conflict,"[35] as "a private prosecutor may appear for the private offended complainants in the prosecution of an offense independent of the exclusive right of the Ombudsman to deputize."[36] The Ombudsman, however, did not address the contention that the Sandiganbayan, not the CA, has appellate jurisdiction over the RTC in this case.

THE COURT'S RULING

We resolve to grant the petition.

The Sandiganbayan, not the CA, has appellate jurisdiction over the RTC's decision not to allow Atty. Sitoy to prosecute the case on behalf of the Ombudsman

Presidential Decree (*PD*) No. 1606 created the Sandiganbayan. Section 4 thereof establishes the Sandiganbayan's jurisdiction:

Section 4. *Jurisdiction.* The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

A. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corruption Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in

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[33] *Id.* at 238.

[34] *Id.* at 237- 238.

[35] *Id.* at 238.

[36] *Ibid.*

a permanent, acting or interim capacity, at the time of the commission of the offense:

x x x x x x x x x

B. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection of this section in relation to their office.

C. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In cases where none of the accused are occupying positions corresponding to Salary Grade "27" or higher, as prescribed in the said Republic Act No. 6758, or military or PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including *quo warranto*, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

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 shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or to appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of 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 theretofore 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." [emphasis and underscoring supplied]

This is clear: the Sandiganbayan has exclusive appellate jurisdiction over resolutions issued by RTCs in the exercise of their own original jurisdiction or of their appellate jurisdiction.

We reaffirmed this rule in *Abbot*.[37] In that case, petitioner Engr. Abbot filed a petition for *certiorari* before the CA, claiming that the RTC gravely abused its discretion for not dismissing the information for Malversation thru Falsification of Public Document. The CA refused to take cognizance of the case, holding that the Sandiganbayan has jurisdiction over the petition. Recognizing the amendments made to PD No. 1606 by RA No. 7975,[38] we sustained the CA's position since

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[37] *Supra* note 29.

[38] Section. 4 of RA No. 7975 has since been supplanted by RA No. 8249: AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (but has retained the exclusive appellate

Section 4 of PD No. 1606 has expanded the Sandiganbayan's jurisdiction to include petitions for "*mandamus*, prohibition, ***certiorari***, *habeas corpus*, injunction, and other ancillary writs and processes in aid of its appellate jurisdiction."[39]

In the present case, the CA erred when it took cognizance of the petition for *certiorari* filed by Magno. While it is true that the interlocutory order issued by the RTC is reviewable by *certiorari*, the same was incorrectly filed with the CA. Magno should have filed the petition for *certiorari* with the Sandiganbayan, which has exclusive appellate jurisdiction over the RTC since the accused are public officials charged of committing crimes in their capacity as Investigators of the National Bureau of Investigation.[40]

The CA should have dismissed the petition outright. Since it acted without authority, we overrule the September 26, 2005 Amended Decision of the CA and the subsequent denial of Magno's motions for reconsideration.

Jurisdiction is conferred by law, and the CA's judgment, issued without jurisdiction, is void.

There is no rule in procedural law as basic as the precept that jurisdiction is conferred by law,[41] and any judgment, order or resolution issued without it is void[42] and cannot be given

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jurisdiction of the Sandiganbayan to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, injunction and other ancillary writs).

[39] *Abbot v. Mapayo, supra* note 29 at 271.

[40] *Rollo*, p. 70.

[41] *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559, citing *Spouses Vargas v. Spouses Caminas*, G.R. Nos. 137839-40, June 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin*, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 (1986).

[42] *Id.* at 560, citing *National Housing Authority v. Commission on the Settlement of Land Problems*, G.R. No. 142601, October 23, 2006, 505 SCRA 38, 43.

any effect.[43] This rule applies even if the issue on jurisdiction was raised for the first time on appeal or even after final judgment.[44]

We reiterated and clarified the rule further in *Felicitas M. Machado, et al. v. Ricardo L. Gatdula, et al.*,[45] as follows:

> Jurisdiction over a subject matter is conferred by law and not by the parties' action or conduct. Estoppel generally does not confer jurisdiction over a cause of action to a tribunal where none, by law, exists. In *Lozon v. NLRC*, we declared that:
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> > Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. **This defense may be interposed at any time, during appeal or even after final judgment.** Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.

We note that Magno had already raised – in his supplemental motion for reconsideration before the CA[46] – the ground of lack of jurisdiction before the CA's Decision became final. The CA did not even consider this submission, choosing instead to brush it aside for its alleged failure to raise new or substantial grounds for reconsideration.[47] Clearly, however, its lack of jurisdiction is a new and substantial argument that the CA should have passed upon.

The Office of the Ombudsman cannot rely on the principle of estoppel to cure the jurisdictional defect of its petition before the CA

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[43] *Id.* at 561.

[44] *Id.* at 559, citing *Lozon v. NLRC*, 310 Phil. 1, 12-13 (1995), citing *La Naval Drug Corporation v. Court of Appeals*, 236 SCRA 78 (1994).

[45] *Id.*

[46] *Rollo*, pp. 132-134; dated January 3, 2006.

[47] *Id.* at 45.

The Ombudsman cannot rely on the principle of *estoppel* in this case since Magno raised the issue of jurisdiction before the CA's decision became final. Further, even if the issue had been raised only on appeal to this Court, the CA's lack of jurisdiction could still not be cured. In *Machado*,[48] citing *People of the Philippines v. Rosalina Casiano*,[49] we held:

> In *People v. Casiano*, this Court, on the issue of estoppel, held:
>
> The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. **If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel."** However if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position – that the lower court had jurisdiction.

WHEREFORE, we *DENY* the petitioner's petition for review on *certiorari*, and *DECLARE* the Amended Decision of the Court of Appeals in CA-G.R. SP No. 79809, promulgated on September 26, 2005, as well as its Resolution of February 6, 2006, *NULL AND VOID* for having been issued without jurisdiction. The respondents are hereby given fifteen (15) days from the finality of this Decision within which to seek recourse from the Sandiganbayan. No costs.

SO ORDERED.

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

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[48] *Supra* note 41.

[49] L-15309, February 16, 1961, 1 SCRA 478.

FIRST DIVISION

[G.R. No. 178406. April 6, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALDO SALUDO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT, BY APPELATE COURTS.— Accused-appellant is essentially challenging AAA's credibility and the weight attributed by the RTC to the prosecution's evidence. However, these are factual matters on which the findings of the trial court, as a general rule, bind the appellate courts. x x x There is no reason for us to depart from the general rule in this case. Reviewing the records of the case ourselves, we do not find any fact or circumstance overlooked, misunderstood or misapplied by the RTC, which, if considered, would have warranted a modification or reversal of the outcome of the case. Consequently, we are according high respect, if not conclusive effect, to the factual findings of the RTC, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, especially since such findings had been affirmed by the Court of Appeals.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; DECLARATIONS ON THE WITNESS STAND OF YOUNG AND IMMATURE RAPE VICTIMS DESERVE FULL CREDENCE.— It should be remembered that the declarations on the witness stand of rape victims who are young and immature deserve full credence. Succinctly, when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified were not true.

3. ID.; ID.; ID.; A RAPE VICTIM CANNOT BE EXPECTED TO MECHANICALLY KEEP AND THEN GIVE AN ACCURATE ACCOUNT OF THE TRAUMATIC AND HORRIFYING EXPERIENCE SHE HAD UNDERGONE.— Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.

4. CRIMINAL LAW; RAPE; CARNAL KNOWLEDGE; WHEN THE VICTIM'S TESTIMONY IS CORROBORATED BY THE PHYSICIAN'S FINDING OF PENETRATION, THERE IS SUFFICIENT FOUNDATION TO CONCLUDE THE EXISTENCE OF THE ESSENTIAL REQUISITES OF CARNAL KNOWLEDGE.— AAA's testimony is corroborated by the medical findings of Dr. Palomaria, the examining physician. Dr. Palomaria testified that AAA had an old hymenal laceration at 1, 3, 5 and 9 o'clock positions and was, in fact, pregnant at the time of the examination. It is well-settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisites of carnal knowledge. Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.

5. ID.; ID.; THREAT AND INTIMIDATION; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED IN RAPE WHEN THREATS AND INTIMIDATION ARE EMPLOYED AND THE VICTIM SUBMITS HERSELF TO THE EMBRACE OF HER RAPIST BECAUSE OF FEAR.— Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear. x x x Accused-appellant in this case held a knife against AAA during the rapes. The act of holding a knife by itself is strongly suggestive of force or, at least, intimidation, and threatening the victim with a knife is sufficient to bring a woman into submission. In

addition, AAA did testify as to her attempts to push accused-appellant away from her, but the latter, being a man more than twice AAA's age, could have easily pinned her down by lying on top of her.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THERE IS NO TYPICAL REACTION OR NORM OF BEHAVIOR AMONG RAPE VICTIMS.— Not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility. And although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.

7. ID.; ID.; ID.; NOT IMPAIRED BY THE DELAY IN MAKING A CRIMINAL ACCUSATION IF SUCH DELAY IS SATISFACTORILY EXPLAINED.— As to how CCC came to know of her daughter AAA's rape is immaterial. The fact still remains that AAA was sexually abused by accused-appellant and AAA's delay in disclosing her sexual defilement to CCC is understandable. As AAA testified, after every rape, she was threatened by accused-appellant not to report the same to anyone, otherwise, accused-appellant would kill AAA and her mother. We have declared in a number of cases that delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained. Fear of reprisal, social humiliation, familial considerations, and economic reasons have been considered as sufficient explanations.

8. ID.; ID.; DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES WHICH CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE

PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME.— We have oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.

9. CRIMINAL LAW; RAPE; PENALTY IN CASE AT BAR.— Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, imposes the penalty of *reclusion perpetua* when the rape was committed with force and intimidation. But the imposable penalty becomes *reclusion perpetua* to death when the rape is committed with the use of a deadly weapon. While AAA, in the instant case, testified that accused-appellant was able to rape her after threatening her with a knife, the use of a deadly weapon in the commission of the rape was not alleged in the Informations. Thus, even when it was proved, accused-appellant's use of a knife cannot be appreciated as a qualifying circumstance, and it cannot affect the penalty to be imposed upon accused-appellant. Accordingly, accused-appellant should be sentenced to *reclusion perpetua* for each of the four counts of simple rape.

10. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.— We likewise affirm the award by the Court of Appeals of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to AAA for each count of rape, being in accordance with law and jurisprudence. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.

11. ID.; ID.; EXEMPLARY DAMAGES; CAN BE AWARDED NOT ONLY IN THE PRESENCE OF AN AGGRAVATING CIRCUMSTANCE BUT ALSO WHERE THE CIRCUMSTANCES OF THE CASE SHOW THE HIGHLY REPREHENSIBLE OR OUTRAGEOUS CONDUCT OF THE OFFENDER.— [W]e additionally award exemplary damages pursuant to Article 2229 of the New Civil Code x x x. Exemplary damages are intended to serve as deterrent to serious

wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct. Being corrective in nature, exemplary damages can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. Accused-appellant herein is liable for exemplary damages for raping a minor, AAA, with the use of a knife and threats on the lives of AAA herself and her family, on four separate occasions, until AAA became pregnant. Consequently, accused-appellant should pay AAA exemplary damages in the amount of ₱30,000.00 for each count of rape, in line with existing 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

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated February 24, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01553, which affirmed with modification the Joint Judgment[2] of the Regional Trial Court (RTC), Branch XLII, of Pinamalayan, Oriental Mindoro, in Criminal Case Nos. P-5428, P-5429, P-5430, and P-5431, finding accused-appellant Ronaldo Saludo guilty of four counts of rape, and sentencing him to *reclusion perpetua* and ordering him to indemnify the victim in the amount of ₱50,000.00 for each count of rape, without subsidiary imprisonment. The Court of Appeals, in addition to the penalties imposed by the court *a quo*, ordered Saludo to pay the victim ₱50,000.00 moral damages for each count of rape.

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[1] *Rollo*, pp. 3-30; penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Rebecca de Guia-Salvador and Amelita G. Tolentino, concurring.

[2] CA *rollo*, pp. 30-38; penned by Judge Manuel C. Luna, Jr.

Consistent with our decision in *People v. Cabalquinto*,[3] the real name of the rape victim in this case is withheld. Instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.[4] In this regard, the herein rape victim is referred to as AAA.

In four separate Informations dated August 14, 1995, accused-appellant was charged with four counts of rape committed against AAA on April 10,[5] April 26,[6] May 19,[7] and June 21, 1995.[8] Except for the dates of the commission of the crime, the Informations were identically worded, thus:

CRIM. CASE NO. 5429

That on or about the 10th day of April 1995 at around 9:00 o'clock in the evening, in barangay XXX, municipality of XXX, province of XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, motivated by lewd and unchaste design, did then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one [AAA], a 14-year-old girl, against her will and without her comment.

During his arraignment on September 5, 1995, accused-appellant entered a plea of not guilty to all four charges against him.[9]

The prosecution presented the oral testimonies of AAA, the victim; CCC, AAA's mother; and Dr. Jorge Palomaria, the

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[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] *People v. Guillermo*, G.R. No. 173787, April 23, 2007, 521 SCRA 597, 599.

[5] Criminal Case No. 5429.

[6] Criminal Case No. 5428.

[7] Criminal Case No. 5430.

[8] Criminal Case No. 5431.

[9] Records, p. 22.

physician who physically examined AAA. They testified as to the following:

The first witness, the prosecution presented was the complainant, [AAA]. She testified that she is 14 years old, single, student, and presently residing at x x x.

She personally knows the accused Ronaldo Saludo who is a long time neighbor, living just a few meters away from their hut at x x x. There were several houses clustered in between their respective houses.

[AAA] declared that her parents have been separated for a long time. Her father left them for Manila bringing with him her two sisters. From that time on her mother, three years old sister [BBB], and herself, live in a small hut. The siding of their hut is made of nipa shingles and anyone could easily have access inside the hut.

That last April 10, 1995 at around 9:00 p.m., she and [BBB] were left in their hut. Her mother was in a nearby chapel having a "*pabasa*", as it was a Holy Monday. She slept in one side of their hut while [BBB] slept on the other side. She was awakened when she felt someone entered their hut. It was accused Ronaldo Saludo at a distance of around five meters away from where she was. Immediately after seeing the accused already standing inside their hut, she also stood up, and shouted "*Putang ina mo, anong ginagawa mo sa aming bahay*." Accused approached her and closed her mouth with his hand. Complainant pushed the accused but the latter poke a "*balisong*" knife at her.

There and then, Ronaldo Saludo took off her shorts and panty. Then accused placed himself on top of her, tried hard to insert her (sic) organs to hers. Ultimately, accused succeeded in raping her.

Ronaldo Saludo threatened her that she and her mother would be killed, if she would tell to anybody what have transpired. After he uttered his threat to her, Ronaldo Saludo left the place.

On the very same evening her mother returned home from the chapel. She did not tell her what had happened because of the threat that she and her mother would be killed.

[AAA] underwent sexual experiences against her will with the use of force and intimidation, not once but three more times.

The exact sequence of the startling events happened again on April 26, May 19 and June 21, 1995, in the hands of Ronaldo Saludo everytime her mother is in Manila transporting bananas. Despite those horrifying sexual experiences, complainant continued to attend her classes at the x x x National High School. She did not inform anybody what had happened to her. Neither, did she tell her teachers nor close friends and classmates that she was sexually abused by the accused. She was so much afraid that accused would make good his threat to kill her and her family.

On July 7, 1995 there is a good reason for her mother to be suspicious as her abdomen is becoming bigger and bigger. And so, [AAA] confronted her mother and told her – "*Inay, kung ako ay magsasabi sa iyo, huwag mo akong bugbugin sapagkat ako ay buntis at ang nakabuntis sa akin ay si Ronaldo Saludo*." She also informed her mother regarding the threat of the accused to kill them if she would divulge what had happened to them.

The following day, July 8, 1995 they finally decided to transfer their residence from x x x in order to escape from the accused as he might make good his threat. With such decision, [AAA] had to quit schooling.

On July 9, 1995, [AAA] and her mother [CCC] went to the municipal (sic) police station of x x x, and thereat executed their respective sworn statement relative to the incident in question

And, on July 16, 1995 [AAA] voluntarily subjected herself to the medical examination.

Dr. Jose G. Palomaria, in his medico-legal report made the following finding:

P.E. ***(Physical Examination) ABDOMEN****: With palpable mass occupying the lower half of the abdomen, globular with the smooth surface probably the uterus, fundic height is one finger below the umbilicus.*

I.E. ***(Internal Examination)*** *Normal external genital except for old hymenal laceration at 1, 3, 5 and 9 o'clock position with whitish vaginal discharge in minimal amount.*

- *With (laceration) violaceous, soft cervic compatible to a pregnancy.*

***Suggesting**: Dopper examination, Preg. Test. DX: P.U. 17-18 weeks, Gravida one.*[10]

The prosecution submitted AAA's Certificate of Live Birth to establish that she was born on January 14, 1981[11] and that she was 14 years old when the alleged rape took place.

Saludo himself; Enrique Perez, Sr., a neighbor of AAA and accused-appellant in Barangay XXX; Renato Naling, a *kagawad* of Barangay XXX; Jimmy de Castro, Municipal Mayor of XXX; and Sheryl Perez, Enrique Perez, Sr.'s daughter, testified for the defense. The defense's version of events, based on said witnesses' testimonies, is as follows:

> For his defense, accused maintains his innocence. He knows [AAA] from childhood and her mother [CCC], since he reaches the age of reason. In fact they are neighbors living just 20 meters away from his house at x x x. There are several houses clustered in between their houses. One of them is the house of [DDD], a cousin of [CCC], which is just behind [CCC's] house. Other houses therein are owned by the mother and a brother of [CCC] not far away from the house of the latter.
>
> Accused did not deny his presence in the neighborhood. He declares that in the evening of April 10, 1995, he was in his house with Mayor Jimmy de Castro and other political leaders. There was a political meeting to promote the candidacy of de Castro who was then a mayoralty candidate. After the meeting, which ended at around 10:00 o'clock in the evening, they proceeded to a "*pabasa*" in a nearby chapel. Accused brought with him a lamp (Aladdin), and even saw [CCC] (mother of complainant) serving snacks to the participants of the "*pabasa*". At around 1:00 o'clock in the morning, the mayor and his group went home, leaving behind accused who preferred to stay until 3:00 o'clock in the morning. He reasoned out that it would be impossible for him to commit the act implicated upon him as he was at the above stated place, at time and date in question.
>
> Mayor Jimmy de Castro confirmed that his political leaders, Ronaldo Saludo and a certain Eddie Red, were all the time present

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[10] RTC Decision, CA *rollo*, pp. 31-33.

[11] Records, p. 92.

during the political rally. He even requested the accused to entertain the participants. He likewise confirmed that after the meeting they proceeded to a "*pabasa*" in a nearby chapel and stayed there until 1:00 in the morning but could not ascertain the accused's whereabouts when they were already at the chapel.

Moreover, accused vehemently denied the accusation levelled (sic) against him regarding that incident on April 26, May 19 and June 21, 1995. He claims that these charges against him are all baseless, untrue and fabricated.

He explained that sometime in April or May 1995, [AAA] and a certain Jerry Manongsong eloped. They planned to get married and so Jerry, together with his uncles, aunts and grandmother went to the house of [AAA] to ask for her hand in marriage (*pamanhikan*). Unfortunately [CCC], the mother of [AAA] outrightly rejected the marriage proposal, because Jerry was jobless.

[CCC] even made a remark – "*Bubuntisan lang ng bubuntisan lang si [AAA] ay wala namang trabaho*". With a feeling of rejection, the Manongsong family approached Councilman Naling to intercede for them, but the latter was hesitant to take steps as they were already rejected. Without recourse, Jimmy [Jerry] approached Brgy. Capt. Wenceslao Saludo (father of the accused) instead and confined (sic) his predicament. By chance, was Ronaldo Saludo and two (2) other councilman having a drinking spree. Ronaldo Saludo jokingly made a remark – "*Mabuti pang ako ang nakabuntis, yon pala'y magpapabuntis din lamang, mabuti pa na ako na nang may ganansiya pa*".

Accused vividly remembers that everytime [AAA] would be in the store, fronting their house, he would jokingly greet her – "*Ako na lang ang magiging tatay niyan*" [AAA] would just laugh. However, it was a different thing to [CCC], She resented it and took it seriously. She confronted and scolded Ronaldo Saludo for making such undisciplined remarks.

Accused recalls that the only reason, the complainant and her mother would charged him of rape is because of his uncalled for remarks. However, he explains that it was merely a practical joke he played. He had no intention whatsoever to malign or cause damage neither to the complainant nor to her mother.[12]

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[12] RTC Decision, CA *rollo*, pp. 34-35.

For rebuttal, the prosecution called upon AAA once more and Jerry Manongsong (Manongsong) to belie the defense witnesses' testimonies:

> They disclaim that there was no "*pamanhikan*" that ever took place, as they were not sweetheart. Jerry Manongsong admitted to have executed an affidavit dated August 04, 1995 (Exh. G). He was misled to sign another one in the month of September 1995 by Brgy. Capt. Wenceslao Saludo in Calapan, and not in the presence of Prosecutor Antonio Baldos.[13]

After trial, the RTC rendered its Decision on July 22, 1999 finding accused-appellant guilty of four counts of rape, thus:

> ACCORDINGLY, the court finds accused RONALDO SALUDO GUILTY beyond reasonable doubt, as principal, of the crime of RAPE (4 counts) defined and penalized in Art. 335 of the RPC, and hereby sentences him to suffer FOUR (4) *RECLUSION PERPETUA*, together with the accessory penalties provided by law and to pay the cost.
>
> Accused is likewise ordered to indemnity the victim AAA the amount of ₱50,000.00 in each count of rape, without subsidiary imprisonment.
>
> The accused shall be entitled to the full term of his preventive imprisonment, if he has any to his credit, provided that he shall agreed (sic) to abide with the disciplinary rules imposed upon convicted prisoners, otherwise he shall be entitled to only four-fifths of the preventive imprisonment.
>
> The bail bond posted by the accused for his provisional liberty is hereby ordered cancelled and forthwith a warrant of arrest be issued.[14]

The records of these cases were forwarded to us for review and we accepted accused-appellant's appeal in our Resolution[15] dated September 11, 2000. The People, through the Office of the Solicitor General (OSG), filed its Appellee's Brief on

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[13] *Id.* at 35.

[14] *Id.* at 37-38.

[15] *Id.* at 42.

February 6, 2003[16] while accused-appellant filed his Appellant's Brief on September 19, 2002.[17]

Conformably with our decision in *People v. Mateo*,[18] we remanded accused-appellant's appeal to the Court of Appeals where it was docketed as CA-G.R. CR.-H.C. No. 01553.

The Court of Appeals, in its Decision dated February 24, 2006, affirmed the judgment of conviction of the RTC, but with the modification that accused-appellant was further ordered to pay AAA moral damages in the amount of ₱50,000.00 for each count of rape. The appellate court decreed:

> WHEREFORE, the Decision dated July 22, 1999 rendered by the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch XLII, in Criminal Cases Nos. P-5428, P-5429, P-5430 and P-5431, finding the accused-appellant guilty beyond reasonable doubt of the crime of rape on four (4) counts to suffer the penalty of four (4) *reclusion perpetua* and to indemnify the victim the amount of ₱50,000.00 in each count of rape is **AFFIRMED** with the **MODIFICATION** that the accused-appellant is **further** ordered to pay private complainant the amount of ₱50,000.00 for each count of rape as moral damages.[19]

On July 4, 2007, the case records were forwarded to us for review a second time.[20]

In the Resolution dated August 1, 2007,[21] we required the parties to file their respective supplemental briefs, if they so desire. However, the parties submitted separate manifestations stating that they were waiving the filing of supplemental briefs and opting, instead, to stand by the briefs they had previously filed.

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[16] *Id.* at 157-189.

[17] *Id.* at 113-137.

[18] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[19] *Rollo*, pp. 29-30.

[20] *Id.* at 1.

[21] *Id.* at 35.

In his Appellant's Brief, accused-appellant made the following assignment of errors:

I

THE TRIAL COURT ERRED IN NOT REJECTING THE HIGHLY PREPOSTEROUS, IF NOT OBVIOUSLY REHEARSED TESTIMONY OF THE PRIVATE COMPLAINANT IN CRIMINAL CASES NOS. 5428, 5429, 5430 AND 5431.

II

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE PRIVATE COMPLAINANT'S TESTIMONY CONSIDERING THAT SHE DID NOT OFFER ANY TENACIOUS RESISTANCE AND CONSIDERING THE FACT THAT THERE WAS DELAY IN REPORTING THE ALLEGED RAPES TO THE AUTHORITIES.

III

THE TRIAL COURT ERRED IN NOT GIVING EVIDENTIARY WEIGHT TO THE EVIDENCE ADDUCED BY THE ACCUSED-APPELLANT WHICH WAS AMPLY CORROBORATED ON MATERIAL POINTS BY DISINTERESTED WITNESSES.

IV

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF FOUR (4) COUNTS OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO SUBSTANTIATE HIS GUILT BEYOND REASONABLE DOUBT.

Accused-appellant harps on the following purported holes in AAA's testimony: (1) AAA did not categorically state that accused-appellant succeeded in inserting his penis into her vagina; (2) according to AAA, the rapes happened at night, but she did not say that there was enough light for her to clearly identify accused-appellant; (3) AAA and her mother CCC gave contradicting reasons as to why the alleged rapes were divulged almost three months after the first alleged rape took place; and (4) AAA did not offer any tenacious resistance during the alleged sexual assaults, thus, the requisite of force and intimidation for the crime of rape was lacking.

Accused-appellant is essentially challenging AAA's credibility and the weight attributed by the RTC to the prosecution's evidence. However, these are factual matters on which the findings of the trial court, as a general rule, bind the appellate courts. In *People v. Malejana*,[22] citing *People v. Flores*,[23] we provided the following explication that:

> When the credibility of the witnesses is at issue, appellate courts will not disturb the findings of the trial court, the latter being in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial unless certain facts of substance and value had been overlooked which, if considered, might affect the results of the case. The underlying reason for this principle has been explained as follows:
>
> > Having the opportunity to observe them, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court.
> >
> > The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer of the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these on the basis of his observations arrive at an informed and reasoned verdict.

There is no reason for us to depart from the general rule in this case. Reviewing the records of the case ourselves, we do not find any fact or circumstance overlooked, misunderstood or misapplied by the RTC, which, if considered, would have warranted a modification or reversal of the outcome of the case. Consequently, we are according high respect, if not

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[22] G.R. No. 145002, January 24, 2006, 479 SCRA 610, 620-621.

[23] 322 Phil. 24, 36 (1996).

conclusive effect, to the factual findings of the RTC, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, especially since such findings had been affirmed by the Court of Appeals.[24]

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[25] describes how the crime of rape is committed:

> ART. 335. *When and how rape is committed*. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> (1) By using force or intimidation;
>
> (2) When the woman is deprived of reason or otherwise unconscious; and
>
> (3) When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by *reclusion perpetua*.
>
> Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

The prosecution's evidence established beyond reasonable doubt all elements of rape committed against AAA on four occasions. The supposed defects in AAA's testimony, pointed out by accused-appellant, do not diminish AAA's credibility.

It should be remembered that the declarations on the witness stand of rape victims who are young and immature deserve full credence. Succinctly, when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified were not true.[26]

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[24] *People v. Bulan*, 498 Phil. 586, 598 (2005).

[25] Took effect on December 31, 1993.

[26] *People v. Turco, Jr.*, 392 Phil. 498, 512 (2000).

Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[27]

Here, AAA was only 14 years old when she was mercilessly corrupted by a conscienceless human being with bestial desires. With more reason must we accord to her greater understanding, consideration, and sensitivity as she relives, through her testimony, her harrowing experiences at accused-appellant's hands.

Although AAA failed to describe the incidents of rape in more detail, it is still plain and clear from her testimony that accused-appellant, through force and intimidation, was able to successfully have carnal knowledge of AAA on four separate dates:

FISCAL BALLOCANAG:

Q After you pushed Ronaldo Saludo and uttering these words what did Ronaldo Saludo do if any?
A He poked a *balisong* knife on me.

Q What happened after that?
A He removed my shorts including my panty, sir.

Q After that what transpired next?
A **He lie down on top of me and tried hard to insert his penis into my vagina.**
(witness is weeping)

Q When Ronaldo Saludo undressed you and went on top of you will you inform this court how Ronaldo undressed himself?
A He is already naked, sir.

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[27] *People v. Cula*, 385 Phil. 742, 753 (2000).

Q After Ronaldo Saludo went on top of you what did you do if any?
A I tried to push him away, sir.

Q What happened next?
A **He raped me, sir.**

Q What happened next?
A He told me not to tell anybody what happened because if I will do so he will kill me as well as my mother with that I became angry and afraid.

Q After that incident on April 10, 1995 which you have just narrated was there any other incident that transpired between you and Ronaldo Saludo?
A Yes, sir.

x x x x x x x x x

Q What happened on April 26, 1995 pm?
A **Again Ronaldo Saludo raped me, sir.**

Q How did Ronaldo Saludo raped you?
A He threatened my life, sir.

Q So it appears from your testimony that Ronaldo Saludo raped you on April 10 and another on April 26, 1995, is that correct?
A Yes, sir.

x x x x x x x x x

Q After that incident on April 26, 1995 was there any other incident that happened between you and Ronaldo Saludo?
A Yes, sir.

Q When was that?
A May 19, 1995, sir.

Q What transpired on May 19, 1995?
A Again Ronaldo Saludo entered my residence, sir.

Q What happened?
A He again threatened my life.

Q What else did he do aside from threatening your life?
A **He again raped me, sir.**

x x x x x x x x x

Q After that incident on May 19, was there any incident that transpired between you and Ronaldo?
A Yes, sir.

Q When was that?
A June 21, 1995, sir.

Q Was it in the afternoon?
A In the evening, sir.

x x x x x x x x x

Q The same is true on that night which happened on June 21, 1995?
A Yes, sir.[28] (Emphases ours.)

As put down on record, AAA broke down and cried as she was giving her testimony before the RTC. Such tears were a clear indication that she was telling the truth. As it has been repeatedly held, no woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice.[29]

Moreover, AAA's testimony is corroborated by the medical findings of Dr. Palomaria, the examining physician. Dr. Palomaria testified that AAA had an old hymenal laceration at 1, 3, 5 and 9 o'clock positions and was, in fact, pregnant at the time of the examination. It is well-settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisites of carnal knowledge. Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[30]

Accused-appellant's contention that AAA could not have positively and clearly identified her assailant because the rapes

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[28] TSN, October 24, 1995, pp. 9-27.

[29] *People v. Alcazar*, G.R. No. 186494, September 15, 2010, 630 SCRA 622, 633.

[30] *People v. Belen*, 432 Phil. 881, 893 (2002).

were committed at nighttime, deserves scant consideration. We agree with the following observation of the Solicitor General:

> It is true that it was nighttime when appellant perpetrated the dastardly acts. However, the darkness was not such as to absolutely preclude anyone from seeing anything as shown by AAA's declarations.
>
> AAA categorically testified that it was appellant who entered their hut and, thereafter, raped her on April 10 and 26, 1995, May 19, 1995 and June 21, 1995, AAA could not have mistaken appellant for somebody else since appellant was her long time neighbor and their houses were only thirty (30) meters away from each other. In fact, being neighbors, AAA was already familiar with appellant's physical feature.
>
> Thus, it has been held that identification of a person is best established through familiarity with his physical feature.
>
> Assuming that AAA's hut was in total darkness when the rapes happened, the same did not prevent AAA from recognizing her attacker because of their geographical propinquity during the violation.[31]

Indeed, there is no doubt that AAA recognized accused-appellant for she had ample time and opportunity to see the latter's face during the carnal act that took place on four different nights. In truth, a man and a woman cannot be physically closer to each other than during a sexual act.[32]

In another attempt to discredit AAA, accused-appellant questions AAA's behavior during and after the rapes.

Accused-appellant plays up the fact that during the sexual assault, AAA did not offer any tenacious resistance; and argues that the requisite of force and intimidation for the crime of rape is lacking.

We disagree. Physical resistance need not be established in rape when threats and intimidation are employed and the victim

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[31] CA *rollo*, pp. 176-177.

[32] *People v. Bitancor*, 441 Phil. 758, 770 (2002).

submits herself to the embrace of her rapist because of fear.[33] As we have ruled in *People v. Bayani*[34]:

> [I]t must be emphasized that force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point. So must it likewise be for intimidation which is addressed to the mind of the victim and is therefore subjective. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is therefore enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident. Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol. And when such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of continuing intimidation, then offering none at all would not mean consent to the assault so as to make the victim's participation in the sexual act voluntary.[35]

Also in *People v. Fraga*,[36] we held:

> The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to

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[33] *People v. David*, 461 Phil. 364, 384-385 (2003).

[34] 331 Phil. 169 (1996).

[35] *Id.* at 193.

[36] 386 Phil. 884 (2000).

her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.[37]

Accused-appellant in this case held a knife against AAA during the rapes. The act of holding a knife by itself is strongly suggestive of force or, at least, intimidation, and threatening the victim with a knife is sufficient to bring a woman into submission.[38] In addition, AAA did testify as to her attempts to push accused-appellant away from her, but the latter, being a man more than twice AAA's age, could have easily pinned her down by lying on top of her.

Accused-appellant further avers that AAA's behavior during and after the alleged rapes were not in accordance with human conduct and experience. AAA did not shout for help when she saw accused-appellant naked in her house. Also, despite several opportunities for AAA to inform her mother, relatives, and friends of the rapes, or to report the incidents to the authorities, still she did not. In particular, after the alleged rape that took place on April 10, 1995, AAA woke up early as if nothing unusual happened to her and proceeded with her daily routine, like helping her mother cook the food and clean the house.

Not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility.[39] And although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and

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[37] *Id.* at 907.

[38] *People v. Buates*, 455 Phil. 688, 702 (2003).

[39] *People v. Suarez*, 496 Phil. 231, 244 (2005).

there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.[40]

As to how CCC came to know of her daughter AAA's rape is immaterial. The fact still remains that AAA was sexually abused by accused-appellant and AAA's delay in disclosing her sexual defilement to CCC is understandable. As AAA testified, after every rape, she was threatened by accused-appellant not to report the same to anyone, otherwise, accused-appellant would kill AAA and her mother. We have declared in a number of cases that delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained. Fear of reprisal, social humiliation, familial considerations, and economic reasons have been considered as sufficient explanations.[41]

Accused-appellant merely raised denial and alibi as his defenses. We have oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[42] As the Court of Appeals pointed out:

> Private complainant, in open court, positively identified accused-appellant as the assailant in these four (4) rape incidents. Such a categorical and positive identification of an accused, without any showing of ill-motive on the part of the witness testifying on the matter, prevails over alibi and denial, which are negative and self-serving evidence undeserving of real weight in law. Fundamental is the rule in evidence that alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. For it to prosper, it is not enough for the accused to prove that they were

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[40] *People v. Atadero,* G.R. No. 183455, October 20, 2010.

[41] *People v. Fuensalida,* 346 Phil. 463, 472 (1997).

[42] *People v. Narido,* 374 Phil. 489, 508 (1999).

somewhere else when the crime was committed; they must likewise demonstrate that it was physically impossible for them to have been at the scene of the crime at the time.

In this case, accused-appellant completely failed to establish that it was physically impossible for him to have been at the scene of the crime at the time the rape incidents happened. Moreover, accused-appellant's allegation that these cases were filed as a result of his jokes is apparently unconvincing. Such is a very flimsy reason for a woman, especially a minor, to file a rape case. The humiliation brought about by going to open court and submitting oneself to medical examination is too much a burden for a woman, such as private complainant, which cannot be merely surpassed by jokes allegedly uttered by the accused-appellant.[43]

Also, the testimonies of the defense's four witnesses that AAA eloped with Manongsong and it was Manongsong, not accused-appellant, who impregnated AAA, were negated by the prosecution's evidence. Manongsong, when presented as a rebuttal witness, categorically declared that he had no relationship at all with AAA, much more, that he had eloped with her. Manongsong even stated that he was deceived by accused-appellant's father, a *barangay* captain, into signing an affidavit favoring accused-appellant. Said affidavit was not signed in the presence of Prosecutor Antonio Baldos as insinuated by the defense.[44]

All told, we find no reason to reverse the judgment of conviction rendered by the RTC against accused-appellant, and affirmed by the Court of Appeals.

We now come to the propriety of the penalties imposed on accused-appellant.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, imposes the penalty of *reclusion perpetua* when the rape was committed with force and intimidation. But the imposable penalty becomes *reclusion perpetua* to death when the rape is committed with the use of a deadly weapon. While AAA, in the instant case, testified that accused-appellant was

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[43] *Rollo*, pp. 28-29.

[44] TSN, January 18, 1999, pp. 3-5, 8-11.

able to rape her after threatening her with a knife, the use of a deadly weapon in the commission of the rape was not alleged in the Informations. Thus, even when it was proved, accused-appellant's use of a knife cannot be appreciated as a qualifying circumstance, and it cannot affect the penalty to be imposed upon accused-appellant. Accordingly, accused-appellant should be sentenced to *reclusion perpetua* for each of the four counts of simple rape.

We likewise affirm the award by the Court of Appeals of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to AAA for each count of rape, being in accordance with law and jurisprudence. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.[45]

However, we additionally award exemplary damages pursuant to Article 2229 of the New Civil Code, which reads:

> ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Exemplary damages are intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.[46] Being corrective in nature, exemplary damages can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.[47] Accused-appellant herein is liable for exemplary damages for raping a minor, AAA, with the use of a knife and threats on the lives of AAA herself and her family, on four separate occasions, until AAA became pregnant.

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[45] *People v. Atadero*, G.R. No. 183455, October 20, 2010.

[46] *Id.*

[47] *People v. Dalisay*, G.R. No. 188106, November 25, 2009.

Consequently, accused-appellant should pay AAA exemplary damages in the amount of ₱30,000.00 for each count of rape, in line with existing jurisprudence.[48]

WHEREFORE, the instant appeal is *DENIED* and the Decision dated February 24, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01553 is *AFFIRMED WITH MODIFICATION* that the accused-appellant Ronaldo Saludo is additionally ordered to pay the victim AAA the amount of ₱30,000.00 exemplary damages for each of the four (4) counts of rape.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 180173. April 6, 2011]

MICROSOFT PHILIPPINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX CREDIT OR REFUND; STRICTLY CONSTRUED AGAINST THE TAXPAYER.— [A] tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case VAT input tax, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.

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[48] *Id.*

2. ID; VALUE-ADDED TAX (VAT); INVOICING REQUIREMENTS; A VAT-REGISTERED TAXPAYER IS REQUIRED TO COMPLY WITH ALL THE VAT INVOICING REQUIREMENTS TO BE ABLE TO FILE A CLAIM FOR INPUT TAXES ON DOMESTIC PURCHASES FOR GOODS OR SERVICES ATTRIBUTABLE TO ZERO-RATED SALES.— The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales. A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95. Contrary to Microsoft's claim, RR 7-95 expressly states that "[A]ll purchases covered by **invoices other than a VAT invoice shall not give rise to any input tax**." Microsoft's invoice, lacking the word "zero-rated," is not a "VAT invoice," and thus cannot give rise to any input tax.

3. ID.; ID.; ID.; THE PRINTING OF THE WORD "ZERO-RATED" IS REQUIRED TO BE PLACED ON VAT INVOICES OR RECEIPTS COVERING ZERO-RATED SALES IN ORDER TO BE ENTITLED TO CLAIM FOR TAX CREDIT OR REFUND.— We have ruled in several cases that the printing of the word "zero-rated" is required to be placed on VAT invoices or receipts covering zero-rated sales in order to be entitled to claim for tax credit or refund. In *Panasonic v. Commissioner of Internal Revenue*, we held that the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT is actually paid. Absent such word, the government may be refunding taxes it did not collect.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS, GENERALLY NOT DISTURBED ON APPEAL; CASE AT BAR.— Here, both the CTA Second Division and CTA *En Banc* found that Microsoft's receipts did not indicate the word "zero-rated" on its official receipts. The findings of fact of the CTA are not to be disturbed unless clearly shown to be unsupported by substantial evidence. We see no reason to disturb the CTA's findings. Indisputably, Microsoft failed to comply with the invoicing requirements of the NIRC and its implementing

revenue regulation to claim a tax credit or refund of VAT input tax for taxable year 2001.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Alberto R. Bomediano, Jr. 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 Decision[2] dated 24 October 2007 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 258, which affirmed the Decision[3] dated 31 August 2006 and Resolution[4] dated 8 January 2007 of the CTA Second Division in CTA Case No. 6681.

The Facts

Petitioner Microsoft Philippines, Inc. (Microsoft) is a value-added tax (VAT) taxpayer duly registered with the Bureau of Internal Revenue (BIR). Microsoft renders marketing services to Microsoft Operations Pte Ltd. (MOP) and Microsoft Licensing, Inc. (MLI), both affiliated non-resident foreign corporations. The services are paid for in acceptable foreign currency and qualify as zero-rated sales for VAT purposes under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997,[5] as amended. Section 108(B)(2) states:

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 66-78. Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Olga Palanca-Enriquez, concurring and Presiding Justice Ernesto D. Acosta, dissenting.

[3] *Id.* at 45-60. Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring.

[4] *Id.* at 63-64.

[5] Republic Act No. 8424, or The Tax Reform Act of 1997.

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

(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:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported x x x;

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x

For the year 2001, Microsoft yielded total sales in the amount of ₱261,901,858.99. Of this amount, ₱235,724,614.68 pertain to sales derived from services rendered to MOP and MLI while ₱26,177,244.31 refer to sales to various local customers. Microsoft paid VAT input taxes in the amount of ₱11,449,814.99 on its domestic purchases of taxable goods and services.

On 27 December 2002, Microsoft filed an administrative claim for tax credit of VAT input taxes in the amount of ₱11,449,814.99 with the BIR. The administrative claim for tax credit was filed within two years from the close of the taxable quarters when the zero-rated sales were made.

On 23 April 2003, due to the BIR's inaction, Microsoft filed a petition for review with the CTA.[6] Microsoft claimed to be entitled to a refund of unutilized input VAT attributable to its zero-rated sales and prayed that judgment be rendered directing the claim for tax credit or refund of VAT input taxes for taxable year 2001.

On 16 June 2003, respondent Commissioner of Internal Revenue (CIR) filed his answer and prayed for the dismissal of the petition for review.

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[6] Docketed as CTA Case No. 6681.

In a Decision dated 31 August 2006, the CTA Second Division denied the claim for tax credit of VAT input taxes. The CTA explained that Microsoft failed to comply with the invoicing requirements of Sections 113 and 237 of the NIRC as well as Section 4.108-1 of Revenue Regulations No. 7-95[7] (RR 7-95). The CTA stated that Microsoft's official receipts do not bear the imprinted word "zero-rated" on its face, thus, the official receipts cannot be considered as valid evidence to prove zero-rated sales for VAT purposes.

Microsoft filed a motion for reconsideration which was denied by the CTA Second Division in a Resolution dated 8 January 2007.

Microsoft then filed a petition for review with the CTA *En Banc*.[8] In a Decision dated 24 October 2007, the CTA *En Banc* denied the petition for review and affirmed *in toto* the Decision dated 31 August 2006 and Resolution dated 8 January 2007 of the CTA Second Division. The CTA *En Banc* found no new matters that have not been considered and passed upon by the CTA Second Division and stated that the petition had only been a mere rehash of the arguments earlier raised.

Hence, this petition.

The Issue

The main issue is whether Microsoft is entitled to a claim for a tax credit or refund of VAT input taxes on domestic purchases of goods or services attributable to zero-rated sales for the year 2001 even if the word "zero-rated" is not imprinted on Microsoft's official receipts.

The Court's Ruling

The petition lacks merit.

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[7] Consolidated Value-Added Tax Regulations. Issued on 9 December 1995 and took effect on 1 January 1996.

[8] Docketed as CTA EB No. 258.

Microsoft insists that Sections 113 and 237 of the NIRC and Section 4.108-1 of RR 7-95 do not provide that failure to indicate the word "zero-rated" in the invoices or receipts would result in the outright invalidation of these invoices or receipts and the disallowance of a claim for tax credit or refund.

At the outset, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer.[9] The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case VAT input tax, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.

Sections 113(A) and 237 of the NIRC which provide for the invoicing requirements for VAT-registered persons state:

SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –

(A) *Invoicing Requirements.* – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. x x x

SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and

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[9] *Hitachi Global Storage Technologies Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 174212, 20 October 2010, citing *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219, and *Commissioner of Internal Revenue v. Seagate Technology*, 491 Phil. 317 (2005).

description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section.

Related to these provisions, Section 4.108-1 of RR 7-95 enumerates the information which must appear on the face of the official receipts or invoices for every sale of goods by VAT-registered persons. At the time Microsoft filed its claim for credit of VAT input tax, RR 7-95 was already in effect. The provision states:

Sec. 4.108-1. Invoicing Requirements. – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;

4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales**; and
6. the invoice value or consideration.

x x x x x x x x x

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT invoice." All purchases covered by invoices other than a "VAT invoice" shall not give rise to any input tax. (Emphasis supplied)

The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales. A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95. Contrary to Microsoft's claim, RR 7-95 expressly states that "[A]ll purchases covered by **invoices other than a VAT invoice shall not give rise to any input tax**." Microsoft's invoice, lacking the word "zero-rated," is not a "VAT invoice," and thus cannot give rise to any input tax.

The subsequent enactment of Republic Act No. 9337[10] on 1 November 2005 elevating provisions of RR 7-95 into law merely codified into law administrative regulations that already had the force and effect of law. Such codification does not mean that prior to the codification the administrative regulations were not enforceable.

We have ruled in several cases[11] that the printing of the word "zero-rated" is required to be placed on VAT invoices

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[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] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, 31 January 2011; *Silicon Philippines, Inc. v. Commissioner*

or receipts covering zero-rated sales in order to be entitled to claim for tax credit or refund. In *Panasonic v. Commissioner of Internal Revenue,*[12] we held that the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT is actually paid. Absent such word, the government may be refunding taxes it did not collect.

Here, both the CTA Second Division and CTA *En Banc* found that Microsoft's receipts did not indicate the word "zero-rated" on its official receipts. The findings of fact of the CTA are not to be disturbed unless clearly shown to be unsupported by substantial evidence.[13] We see no reason to disturb the CTA's findings. Indisputably, Microsoft failed to comply with the invoicing requirements of the NIRC and its implementing revenue regulation to claim a tax credit or refund of VAT input tax for taxable year 2001.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 24 October 2007 of the Court of Tax Appeals *En Banc* in CTA EB No. 258.

SO ORDERED.

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

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of Internal Revenue, G.R. No. 172378, 17 January 2011; *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 181858, 24 November 2010; *Hitachi Global Storage Technologies Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 174212, 20 October 2010; *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 177127, 11 October 2010; *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal* Revenue, G.R. No. 178090, 8 February 2010, 612 SCRA 28.

[12] *Supra*.

[13] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541 (1999).

[*] Designated additional member per Special Order No. 978 dated 30 March 2011.

SECOND DIVISION

[G.R. No. 182967. April 6, 2011]

PHILIPPINE NATIONAL RAILWAYS, *petitioner, vs.* **KANLAON CONSTRUCTION ENTERPRISES CO., INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; GOVERNMENT CONTRACTS; REQUIREMENTS FOR THE EXECUTION THEREOF.— [T]he Administrative Code of 1987 expressly prohibits the entering into contracts involving the expenditure of public funds unless two prior requirements are satisfied. First, there must be an appropriation law authorizing the expenditure required in the contract. Second, there must be attached to the contract a certification by the proper accounting official and auditor that funds have been appropriated by law and such funds are available. Failure to comply with any of these two requirements renders the contract void. In several cases, the Court had the occasion to apply these provisions of the Administrative Code of 1987 and the Government Auditing Code of the Philippines. In these cases, the Court clearly ruled that the two requirements – the existence of appropriation and the attachment of the certification – are "conditions *sine qua non* for the execution of government contracts."

2. ID.; ID.; ID.; ID.; ID.; FAILURE TO COMPLY THEREWITH RENDERS THE CONTRACT VOID.— The law expressly declares void a contract that fails to comply with the two requirements, namely, an appropriation law funding the contract and a certification of appropriation and fund availability. The clear purpose of these requirements is to insure that government contracts are never signed unless supported by the corresponding appropriation law and fund availability. The three contracts between PNR and Kanlaon do not comply with the requirement of a certification of appropriation and fund availability. Even if a certification of appropriation is not applicable to PNR if the funds used are internally generated,

still a certificate of fund availability is required. Thus, the three contracts between PNR and Kanlaon are void for violation of Sections 46, 47, and 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987, as well as Sections 85, 86, and 87 of the Government Auditing Code of the Philippines.

3. ID.; ID.; ID.; ID.; ID.; ID.; WHERE THE CONTRACT IS DECLARED VOID, THE OFFICERS ENTERING INTO THE CONTRACT SHALL BE LIABLE TO THE GOVERNMENT OR OTHER CONTRACTING PARTY FOR ANY CONSEQUENT DAMAGE TO SAME EXTENT AS IF THE TRANSACTION HAD BEEN WHOLLY BETWEEN PRIVATE PARTIES.— Kanlaon is not left without recourse. The law itself affords it the remedy. Section 48 of the Administrative Code of 1987 provides that "the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties." Kanlaon could go after the officers who signed the contract and hold them personally liable.

SERENO, *J., concurring opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; GOVERNMENT CONTRACTS; CONTRACTS OF GOVERNMENT AGENCIES WITHOUT THE PROPER APPROPRIATION AND THE ACCOMPANYING CERTIFICATE OF AVAILABILITY OF FUNDS ARE VOID; EXPLAINED.— I fully agree that contracts of government agencies without the proper appropriation and the accompanying Certificate of Availability of Funds are void for being contrary to law. In the case of government corporations, of course, the first requirement is not imposable. However, it must be noted that this rule notwithstanding, recovery for unpaid services or sale of goods may still be had, as we enunciated in *Vigilar v. Aquino*, *Royal Trust Corporation v. COA, Eslao v. COA, Melchor v. COA, EPG Construction Company v. Vigilar*, and *Department of Health v . C.V. Canchela & Associates, Architects.* Public interest and equity may dictate that the contractor should be compensated for services rendered and work done that benefited the government and the public. In the instant case, considering that respondent has already been paid the equivalent of around eighty seven (87%) percent of the total contract

price, the application of equity principles does not seem to be as imperative as in the cases earlier cited. There is no reason to remand the case for reception of evidence to determine *quantum meruit*, which is the default solution when the contract supporting the services rendered has been declared void. Had payment to respondent been significantly less as to amount to unjust enrichment on the part of government, I may have had to disagree with the *ponencia*.

APPEARANCES OF COUNSEL

Estrada Marzan for petitioner.
Young Revilla Gambol & Magat for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 26 February 2008 Decision[2] and 26 May 2008 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 70205. In its 26 February 2008 Decision, the Court of Appeals affirmed the 12 December 2000 Decision,[4] as amended by the 22 February 2001 Order,[5] of the Regional Trial Court of Quezon City, Branch 221 (trial court), directing petitioner Philippine National Railways (PNR) to pay respondent Kanlaon Construction Enterprises Co., Inc. (Kanlaon) the remaining balance of the contracts and to release the retention money. In its 26 May 2008 Resolution, the Court of Appeals denied PNR's motion for reconsideration.

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

[2] *Rollo*, pp. 58-68. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Mario L. Guariña III, concurring.

[3] *Id.* at 73.

[4] *Id.* at 44-51. Penned by Judge Noel G. Tijam (now an Associate Justice of the Court of Appeals).

[5] *Id.* at 57.

The Facts

In July 1990, PNR and Kanlaon entered into contracts for the repair of three PNR station buildings and passenger shelters, namely: 1) College Station for ₱2,316,568.41;[6] 2) Biñan Station for ₱2,547,978.63;[7] and 3) Buendia Station for ₱1,820,534.40.[8] The total cost of the three projects was ₱6,685,081.44. By November 1990, Kanlaon alleged that it had already completed the three projects.[9]

On 30 June 1994, Kanlaon sent a demand letter to PNR requesting for the release of the retention money in the amount of ₱333,894.07.[10]

In a letter dated 12 July 1994,[11] PNR denied Kanlaon's demand because of the 24 January 1994 Notices of Suspension[12] issued by the Commission on Audit (COA).

On 8 November 1994, Kanlaon filed a complaint for collection of sum of money plus damages against PNR.[13] Kanlaon sought to recover from PNR a total of ₱865,906.79 consisting of the

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[6] *Id.* at 18-20. The contract was dated 12 July 1990.

[7] *Id.* at 21-23. The contract was dated 19 July 1990.

[8] *Id.* at 24-26. The contract was dated 19 July 1990.

[9] Kanlaon alleged that it completed the College Station on 23 November 1990, the Biñan Station on 19 November 1990, and the Buendia Station on 12 November 1990.

[10] Records, p. 17.

[11] *Id.* at 19.

[12] *Id.* at 32-40. The COA directed PNR to suspend the payment due to Kanlaon for the following reasons:

1. The contracts were not approved by the PNR Board of Directors pursuant to Executive Order No. 164, as amended by Executive Order No. 380;
2. The contracts were not submitted to the COA for review in accordance with COA Circular No. 89-299;
3. The contracts did not contain a Certificate of Availability of Funds as required under Sections 85 and 86 of P.D. 1445; and
4. No request for inspection of work accomplishment was made.

[13] *Id.* at 1-7.

remaining balance of the three projects in the amount of ₱531,652.72[14] and the retention money in the amount of ₱334,254.07. In its amended complaint dated 17 August 1995, Kanlaon impleaded the COA.[15]

In its answer, PNR admitted the existence of the three contracts but alleged that Kanlaon did not comply with the conditions of the contract. PNR also alleged that Kanlaon did not complete the projects and that PNR did not have any unpaid balance. PNR added that it had a valid ground to refuse the release of the retention money because of the COA orders suspending the release of payment to Kanlaon.

In its 12 December 2000 Decision, the trial court ruled in favor of Kanlaon. The dispositive portion of the 12 December 2000 Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [Kanlaon] and against the herein defendants [PNR and COA]. Accordingly, defendant PNR is ordered to pay the plaintiff the following amount[s]:
>
> 1. ₱333,894.07 representing the unreleased retention money plus legal interest at 12% per annum computed from the date of the first written demand; [and]
>
> 2. ₱531,652.72 representing the unpaid contract price for the completed projects plus legal interest of 12% per annum computed from the date of the first written demand.
>
> Defendant COA is absolved of any liability for actual damages or moral damages.
>
> However, both defendant PNR and defendant COA are solidarily liable for reasonable attorney's fees in the amount of ₱50,000.00 and cost of suit.
>
> SO ORDERED.[16]

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[14] Kanlaon claimed that PNR had the following remaining balance on the three projects: College Station at ₱131,962.65; Biñan Station at ₱141,391.89; and Buendia Station at ₱288,298.18.

[15] *Rollo*, pp. 35-43.

[16] *Id.* at 51.

On 28 December 2000, COA appealed. On 9 January 2001, PNR filed a motion for reconsideration.

In its 22 February 2001 Order, the trial court modified its 12 December 2000 Decision and fixed the interest rate from twelve percent to six percent per annum from the date of the first written demand.

PNR and COA appealed to the Court of Appeals.

In its 26 February 2008 Decision, the Court of Appeals affirmed the trial court's 12 December 2000 Decision, as amended by its 22 February 2001 Order.

PNR filed a motion for reconsideration.

In its 26 May 2008 Resolution, the Court of Appeals denied PNR's motion.

The Ruling of the Trial Court

The trial court found that Kanlaon completed the projects and that it was entitled to payment in full of the contract price, as well as the release of the retention money. The trial court declared the PNR ledger, which was the only documentary evidence presented by PNR to show that the projects were not completed, to be self-serving and unverified. The trial court declared that PNR failed to present any credible and substantial evidence that Kanlaon failed to complete the projects. Moreover, the trial court stated that COA suspended payment because PNR failed to comply with certain conditions and not because Kanlaon did not complete the projects. The trial court also took judicial notice of the fact that the PNR stations at College, Biñan and Buendia are fully operational and have been continuously used by PNR and the riding public. The trial court absolved COA from actual and moral damages because there was no contractual relations between COA and Kanlaon and it was not shown that COA acted in bad faith or with malice or gross negligence when it issued the Notices of Suspension.

The Ruling of the Court of Appeals

The Court of Appeals sustained the trial court's ruling that PNR was liable for the remaining balance of the contract price and the retention money. The Court of Appeals agreed with the trial court that the preponderance of evidence leaned in favor of Kanlaon's claim against PNR and that there was nothing on record which supports PNR's allegation that Kanlaon failed to complete the project. The Court of Appeals said the only reason PNR refused to pay Kanlaon was because of COA's Notices of Suspension and not Kanlaon's non-completion of the projects. However, the Court of Appeals held that COA is not liable for attorney's fees and costs of the suit for lack of factual and legal bases.

The Issues

PNR raises the following issues:

I. The Court of Appeals erred in finding that the projects were completed.

II. The Court of Appeals erred in affirming the 12 December 2000 Decision of the trial court, as modified by the Order dated February 22, 2001.

III. The Court of Appeals erred in ruling that interest should be reckoned from the date of respondent's first written demand.[17]

The Ruling of the Court

The petition is meritorious.

The Court notes that one of the reasons the COA issued the Notices of Suspension was because the contracts did not contain a Certificate of Availability of Funds as required under Sections 85 and 86 of Presidential Decree No. 1445.[18] Kanlaon does not dispute the absence of a Certificate of Availability of Funds.

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[17] *Id.* at 12.

[18] Entitled "Ordaining and Instituting a Government Auditing Code of the Philippines." Also known as the "Government Auditing Code of the Philippines." Dated 11 June 1978. Sections 85 and 86 of P.D. 1445 provides:

The Administrative Code of 1987, a more recent law, also contains the same provisions. Sections 46, 47, and 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987 provide:

SECTION 46. Appropriation Before Entering into Contract. —
1. No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and
2. Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.

SECTION 47. Certificate Showing Appropriation to Meet Contract. — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the

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Section 85. *Appropriation before entering into contract.*

1. No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.

2. Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriation account.

Section 86. Certificate showing appropriation to meet contract. Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, **no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof**, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

SECTION 48. Void Contract and Liability of Officer. — **Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void**, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties. (Emphasis supplied)

Thus, the Administrative Code of 1987 expressly prohibits the entering into contracts involving the expenditure of public funds unless two prior requirements are satisfied. First, there must be an appropriation law authorizing the expenditure required in the contract. Second, there must be attached to the contract a certification by the proper accounting official and auditor that funds have been appropriated by law and such funds are available. Failure to comply with any of these two requirements renders the contract void.

In several cases,[19] the Court had the occasion to apply these provisions of the Administrative Code of 1987 and the

[19] *COMELEC v. Quijano-Padilla*, 438 Phil. 72 (2002); *Agan, Jr. v. Phil. International Air Terminals Co., Inc.*, 450 Phil. 744 (2003); and *Osmeña v. Commission on Audit*, G.R. No. 98355, 2 March 1994, 230 SCRA 585.

Government Auditing Code of the Philippines. In these cases, the Court clearly ruled that the two requirements – the existence of appropriation and the attachment of the certification – are "conditions *sine qua non* for the execution of government contracts."

In *COMELEC v. Quijano-Padilla*,[20] we stated:

> It is quite evident from the tenor of the language of the law that the existence of appropriations and the availability of funds are indispensable pre-requisites to or conditions *sine qua non* for the execution of government contracts. The obvious intent is to impose such conditions as a *priori* requisites to the validity of the proposed contract.[21]

The law expressly declares void a contract that fails to comply with the two requirements, namely, an appropriation law funding the contract and a certification of appropriation and fund availability.[22] The clear purpose of these requirements is to insure that government contracts are never signed unless supported by the corresponding appropriation law and fund availability.[23]

The three contracts between PNR and Kanlaon do not comply with the requirement of a certification of appropriation and fund availability. Even if a certification of appropriation is not applicable to PNR if the funds used are internally generated, still a certificate of fund availability is required. Thus, the three contracts between PNR and Kanlaon are void for violation of Sections 46, 47, and 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987, as well as Sections 85, 86, and 87 of the Government Auditing Code of the Philippines.

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[20] 438 Phil. 72 (2002).

[21] *Id.* at 93-94.

[22] Section 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987 and Section 87 of the Government Auditing Code of the Philippines.

[23] *Melchor v. Commission on Audit*, G.R. No. 95398, 16 August 1991, 200 SCRA 704.

However, Kanlaon is not left without recourse. The law itself affords it the remedy. Section 48 of the Administrative Code of 1987 provides that "the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties."[24] Kanlaon could go after the officers who signed the contract and hold them personally liable.

WHEREFORE, we *GRANT* the petition. We *REVERSE* and *SET ASIDE* the 26 February 2008 Decision and 26 May 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 70205.

SO ORDERED.

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

Sereno,[*] *J.*, see also concurring opinion.

CONCURRING OPINION

SERENO, *J.*:

I fully agree that contracts of government agencies without the proper appropriation and the accompanying Certificate of Availability of Funds are void for being contrary to law. In the case of government corporations, of course, the first requirement is not imposable. However, it must be noted that this rule notwithstanding, recovery for unpaid services or sale of goods may still be had, as we enunciated in *Vigilar v. Aquino*,[1] *Royal Trust Corporation v. COA*,[2] *Eslao v. COA*,[3]

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[24] See also Section 87 of the Government Auditing Code of the Philippines.

[*] Designated additional member per Special Order No. 978 dated 30 March 2011.

[1] G.R. No. 180388, January 18, 2011.

[2] Supreme Court Resolution *En Banc*, G.R. No. 84202, November 22, 1988, cited in *Eslao v. COA*, 195 SCRA 730.

[3] G.R. No. 89745, April 8, 1991, 195 SCRA 730.

Melchor v. COA,[4] *EPG Construction Company v. Vigilar*,[5] and *Department of Health v. C.V. Canchela & Associates, Architects*.[6] Public interest and equity may dictate that the contractor should be compensated for services rendered and work done that benefited the government and the public.[7] In the instant case, considering that respondent has already been paid the equivalent of around eighty-seven (87%) percent of the total contract price, the application of equity principles does not seem to be as imperative as in the cases earlier cited. There is no reason to remand the case for reception of evidence to determine *quantum meruit*, which is the default solution when the contract supporting the services rendered has been declared void. Had payment to respondent been significantly less as to amount to unjust enrichment on the part of government, I may have had to disagree with the *ponencia*.

THIRD DIVISION

[G.R. No. 188715. April 6, 2011]

RODOLFO N. REGALA, *petitioner, vs.* **FEDERICO P. CARIN,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; MORAL DAMAGES; WHEN AWARDED.— In prayers for moral damages, x x x recovery is more an exception rather than the rule. Moral damages are

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[4] G.R. No. 95398, August 16, 1991, 200 SCRA 705.

[5] G.R. No. 131544, March 16, 2001, 354 566.

[6] *Supra* at note 7.

[7] *Vigilar v. Aquino*, G.R. No. 180388, January 18, 2011.

not meant to be punitive but are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person. To be entitled to such an award, the claimant must satisfactorily prove that he has suffered damages and that the injury causing it has sprung from any of the cases listed in Articles 2219 and 2220 of the Civil Code. Moreover, the damages must be shown to be the proximate result of a wrongful act or omission. The claimant must thus establish the factual basis of the damages and its causal tie with the acts of the defendant. In fine, an award of moral damages calls for the presentation of 1) evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; 2) a culpable act or omission factually established; 3) proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and 4) the proof that the act is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code.

2. ID.; ID.; ID.; MALICE OR BAD FAITH; IMPLIES A CONSCIOUS AND INTENTIONAL DESIGN TO DO A WRONGFUL ACT FOR A DISHONEST PURPOSE OR MORAL OBLIQUITY.— Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will. While the Court harbors no doubt that the incidents which gave rise to this dispute have brought anxiety and anguish to respondent, it is unconvinced that the damage inflicted upon respondent's property was malicious or willful, an element crucial to merit an award of moral damages under Article 2220 of the Civil Code.

3. ID.; ID.; NOMINAL DAMAGES; MAY BE ADJUDICATED IN ORDER THAT THE RIGHT OF THE PLAINTIFF WHICH HAS BEEN VIOLATED BY THE DEFENDANT MAY BE VINDICATED.— Petitioner x x x cannot steer clear from any liability whatsoever. Respondent and his family's

rights to the peaceful enjoyment of their property have, at the very least, been inconvenienced from the incident borne of petitioner's construction work. Any pecuniary loss or damage suffered by respondent cannot be established as the records are bereft of any factual evidence to establish the same. Nominal damages may thus be adjudicated in order that a right of the plaintiff, respondent herein, which has been violated or invaded by the defendant, petitioner herein, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

APPEARANCES OF COUNSEL

Napoleon F. Segundera, Jr. for petitioner.
Tabaquero Albano Lopez & Associates for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Assailed via this petition for review of petitioner Rodolfo N. Regala is the May 26, 2009 Decision[1] of the Court of Appeals which affirmed with modification the May 29, 2006 Decision[2] of the Regional Trial Court (RTC) of Las Piñas City, Br. 255 in Civil Case No. LP-99-0058, ordering petitioner to pay respondent Federico P. Carin moral and exemplary damages and attorney's fees.

Petitioner and respondent are adjacent neighbors at Spirig Street, BF Resort Village, Las Piñas City. When petitioner decided to renovate his one storey residence by constructing a second floor, he under the guise of merely building an extension to his residence, approached respondent sometime in May 1998 for permission to bore a hole through a perimeter wall shared by both their respective properties, to which respondent verbally

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[1] Penned by Associate Justice Fernanda Lampas Peralta with the concurrence of Associate Justices Andres B. Reyes, Jr. and Apolinario D. Bruselas, Jr., CA *rollo*, pp. 157-164.

[2] Records, pp. 579-602.

consented on condition that petitioner would clean the area affected by the work.

As earlier indicated, petitioner's real intention was to build a second floor, in fact with a terrace atop the dividing wall. In the course of the construction of the second floor, respondent and his wife Marietta suffered from the dust and dirt which fell on their property. As petitioner failed to address the problem to respondent's satisfaction, respondent filed a letter-complaint[3] with the Office of the City Engineer and Building Official of Las Piñas City on June 9, 1998.

In his letter-complaint, respondent related that, despite the lack of a building permit for the construction of a second floor, petitioner had demolished the dividing wall, failed to clean the debris falling therefrom, allowed his laborers to come in and out of his (respondent's) property without permission by simply jumping over the wall, and trampled on his vegetable garden; and that despite his protestations, petitioner persisted in proceeding with the construction, he claiming to be the owner of the perimeter wall.

Several "*sumbongs*"[4] (complaints) were soon lodged by respondent before the Office of Barangay Talon Dos against petitioner for encroachment, rampant invasion of privacy and damages arising from the construction, and for illegal construction of scaffoldings inside his (respondent's) property.

As no satisfactory agreement was reached at the last *barangay* conciliation proceedings in December 1998, and petitioner having continued the construction work despite issuance of several stop-work notices from the City Engineer's Office for lack of building permit, respondent filed on March 1999 a complaint[5] for damages against petitioner before the RTC of Las Piñas City.

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[3] Exhibit "B", records, pp. 281-282.

[4] *Id.* at 9 and 284.

[5] Docketed as Civil Case No. LP-99-0058, *id.* at 2-6.

In his complaint, respondent alleged in the main that, instead of boring just one hole as agreed upon, petitioner demolished the whole length of the wall from top to bottom into five parts for the purpose of constructing a second floor with terrace; and that debris and dust piled up on respondent's property ruining his garden and forcing him to, among other things, shut some of the windows of his house. Respondent thus prayed for the award of moral and exemplary damages.

Petitioner, denying respondent's allegations, claimed in his Answer[6] that he was the sole and exclusive owner of the wall referred to as a perimeter wall, the same having been built within the confines of his property and being part and parcel of the house and lot package he purchased from the developer, BF Homes, Inc., in 1981; that the issue of its ownership has never been raised by respondent or his predecessor; and that securing the consent of respondent and his neighbors was a mere formality in compliance with the requirements of the Building Official to facilitate the issuance of a building permit, hence, it should not be taken to mean that he (petitioner) acknowledges respondent to be a co-owner of the wall. He added that he eventually secured the requisite building permit[7] in March 1999 and had duly paid the administrative fine.[8]

Further, petitioner, denying that a demolition of the whole length of the wall took place, claimed that he and his contractor's laborers had been diligently cleaning respondent's area after every day's work until respondent arrogantly demanded the dismantling of the scaffoldings, and barred the workforce from, and threatening to shoot anyone entering the premises; and that the complaint was instituted by respondent as leverage to force him to withdraw the criminal case for slander and light threats[9] which he had earlier filed

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[6] *Id.* at 21-28.

[7] Exhibit "21", *id.* at 427.

[8] *Vide* Exhibit "22", *id.* at 428.

[9] Criminal Case Nos. 43519-20 before the Metropolitan Trial Court of Las Piñas City, Br. 79.

against respondent for uttering threats and obscenities against him in connection with the construction work.

At the trial, after respondent and his wife confirmed the material allegations of the complaint, petitioner took the witness stand and presented his witnesses.

Architect Antonio Punzalan III[10] testified that he installed GI sheets to prevent debris from falling onto respondent's property and had instructed his workers to clean the affected area after every work day at 5:00 p.m., but they were later barred by respondent from entering his property.

Engineer Crisostomo Chan[11] from the Office of the Building Official of Las Piñas City testified, among other things, on the circumstances surrounding the complaint for illegal construction filed by respondent and that a building permit was eventually issued to petitioner on March 15, 1999.

Engineer Sonia Haduca[12] declared that upon a joint survey conducted on the properties of both petitioner and respondent in December 1998 to determine their exact boundaries, she found an encroachment by petitioner of six centimeters at the lower portion of the existing wall negligible, since the Land Survey Law permits an encroachment of up to ten centimeters.

By Decision of May 29, 2006, Branch 255 of the Las Piñas City RTC rendered judgment in favor of respondent whom it awarded moral damages in the sum of ₱100,000, exemplary damages of ₱100,000 and attorney's fees of ₱50,000 plus costs of suit.[13]

In finding for respondent, the trial court declared that, apart from the fact that petitioner knowingly commenced the renovation of his house without the requisite building permit from the City Engineer's Office, he misrepresented to respondent

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[10] TSN, August 4, 16, 2004.

[11] TSN, September 27, 2004.

[12] TSN, October 13, 2004

[13] Records, p. 602.

his true intent of introducing renovations. For, it found that instead of just boring a hole in the perimeter wall as originally proposed, petitioner divided the wall into several sections to serve as a foundation for his firewall (which ended up higher than the perimeter wall) and the second storey of his house.

The trial court further declared that respondent and his family had thus to contend with the noise, dust and debris occasioned by the construction, which petitioner and his work crew failed to address despite respondent's protestations, by refusing to clean the mess or install the necessary safety devices.

Applying Article 2176 of the Civil Code on quasi-delicts, the trial court ruled that petitioner was at fault and negligent for failing to undertake sufficient safety measures to prevent inconvenience and damage to respondent to thus entitle respondent to moral and exemplary damages.

On appeal by petitioner, the Court of Appeals affirmed the trial court's decision with modification by reducing the award of moral and exemplary damages to ₱50,000 and ₱25,000, respectively. The appellate court anchored its affirmance on Article 19 of the New Civil Code which directs every person to, in the exercise of his rights and in the performance of his duties, act with justice, and observe honesty and good faith.

By Resolution[14] of July 10, 2009, the appellate court denied petitioner's motion for reconsideration as well as respondent's prayer in his Comment that the original awards made by the trial court be restored.

Hence, petitioner's present petition faulting the appellate court in

> Affirming with modification the decision of the trial court ….considering the absence of any competent proof to warrant the grant of moral and exemplary damages as well as attorney's fees.[15] (underscoring supplied)

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[14] CA *rollo*, p. 187.

[15] *Rollo*, p. 32.

Petitioner maintains that since moral and exemplary damages are compensatory in nature, being meant neither to punish nor enrich, the claimant must establish that not only did he sustain injury but also that the other party had acted in bad faith or was motivated by ill will. To petitioner, respondents failed to discharge this burden. He adds that the trial court did not delve into whether petitioner's renovations were the primary cause of respondent's claimed injuries, *viz* violation of privacy, sleepless nights and mental anguish, among other things, as it instead focused on the lack of a building permit as basis for the awards.

Rebutting the testimony of respondent's wife as to the alleged unauthorized intrusion of petitioner's workers into respondent's property in order to erect scaffoldings, petitioner points out that such an undertaking would take a considerable length of time and could not have gone unnoticed had consent not been given by respondent.

Moreover, petitioner posits, if consent had truly been withheld, there was nothing to prevent respondent from dismantling or immediately removing the offending structures – a course of action he did not even attempt.

In his Comment[16] to the petition, respondent quotes heavily from the appellate and trial court's findings that fault and negligence attended petitioner's renovation, thus justifying the award of damages. He goes on to reiterate his plea that the awards given by the trial court in its decision of May 29, 2006 should be reinstated.

The petition is partly impressed with merit.

The trial court's award of moral and exemplary damages, as affirmed by the appellate court, was premised on the damage and suffering sustained by respondent arising from quasi-delict under Article 2176[17] of the Civil Code. Thus the trial court explained:

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[16] *Id.* at 350-356.

[17] Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such

Indeed, there was fault or negligence on the part of the defendant when he did not provide sufficient safety measures to prevent causing a lot of inconvenience and disturbance to the plaintiff and his family. The evidence presented by the plaintiff regarding the dirt or debris, as well as the absence of devices or safety measures to prevent the same from falling inside plaintiff's property, were duly established. It did not help the cause of the defendant that he made a lot of misrepresentations regarding the renovations on his house and he did not initially have a building permit for the same. In fact, it was only after the construction works were completed that the said permit was issued and upon payment of an administrative fine by the defendant.[18]

In prayers for moral damages, however, recovery is more an exception rather than the rule. Moral damages are not meant to be punitive but are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person. To be entitled to such an award, the claimant must satisfactorily prove that he has suffered damages and that the injury causing it has sprung from any of the cases listed in Articles 2219[19] and

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fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[18] Records, p. 600.

[19] Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

2220[20] of the Civil Code. Moreover, the damages must be shown to be the proximate result of a wrongful act or omission. The claimant must thus establish the factual basis of the damages and its causal tie with the acts of the defendant.

In fine, an award of moral damages calls for the presentation of 1) evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; 2) a culpable act or omission factually established; 3) proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and 4) the proof that the act is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code.[21]

In the present case, respondent failed to establish by clear and convincing evidence that the injuries he sustained were the proximate effect of petitioner's act or omission. It thus becomes necessary to instead look into the manner by which petitioner carried out his renovations to determine whether this was directly responsible for any distress respondent may have suffered since the law requires that a wrongful or illegal act or omission must have preceded the damages sustained by the claimant.

It bears noting that petitioner was engaged in the lawful exercise of his property rights to introduce renovations to his abode. While he initially did not have a building permit and may have misrepresented his real intent when he initially sought respondent's consent, the lack of the permit was inconsequential

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The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[20] Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently and in bad faith.

[21] *B. F. Metal (Corporation) v. Lomoton*, G.R. No. 170813, April 16, 2008, 551 SCRA 618, 628-629 citing *Philippine Telegraph & Telephone Corp. v. Court of Appeals*, G.R. No. 139268, September 3, 2002, 388 SCRA 270, 276.

since it only rendered petitioner liable to administrative sanctions or penalties.

The testimony of petitioner and his witnesses, specifically Architect Punzalan, demonstrates that they had actually taken measures to prevent, or at the very least, minimize the damage to respondent's property occasioned by the construction work. Architect Punzalan details how upon reaching an agreement with petitioner for the construction of the second floor, he (Punzalan) surveyed petitioner's property based on the Transfer Certificate of Title (TCT) and Tax Declarations[22] and found that the perimeter wall was within the confines of petitioner's property; that he, together with petitioner, secured the consent of the neighbors (including respondent) prior to the start of the renovation as reflected in a Neighbor's Consent[23] dated June 12, 1998; before the construction began, he undertook measures to prevent debris from falling into respondent's property such as the installation of GI sheet strainers, the construction of scaffoldings[24] on respondent's property, the instructions to his workers to clean the area before leaving at 5:00 p.m;[25] and that the workers conducted daily clean-up of respondent's property with his consent, until animosity developed between the parties.[26]

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will.[27] While the Court harbors no doubt that the incidents which gave rise to this dispute have

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[22] Exhibit "11", records, p. 413.

[23] Exhibit "7", *id.* at 288.

[24] Exhibits "5" to "6", *id.* at 278.

[25] TSN, August 4, 2004, pp. 18-34.

[26] *Id.* at 35-38.

[27] *Far East Bank and Trust Company v. Court of Appeals*, G.R. No. 108164, 241 SCRA 671, 675.

brought anxiety and anguish to respondent, it is unconvinced that the damage inflicted upon respondent's property was malicious or willful, an element crucial to merit an award of moral damages under Article 2220 of the Civil Code.

Necessarily, the Court is not inclined to award exemplary damages.[28]

Petitioner, however, cannot steer clear from any liability whatsoever. Respondent and his family's rights to the peaceful enjoyment of their property have, at the very least, been inconvenienced from the incident borne of petitioner's construction work. Any pecuniary loss or damage suffered by respondent cannot be established as the records are bereft of any factual evidence to establish the same. Nominal damages may thus be adjudicated in order that a right of the plaintiff, respondent herein, which has been violated or invaded by the defendant, petitioner herein, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[29]

WHEREFORE, the petition is *GRANTED*. The May 26, 2009 Decision of the Court of Appeals is *VACATED*. The Court orders petitioner to pay respondent the sum of ₱25,000 as nominal damages.

No costs.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[28] *Philippine Telegraph & Telephone Corp. v. Court of Appeals*, G.R. No. 139268, September 3, 2002, 388 SCRA 270, 277.

[29] *Id.* at 279.

FIRST DIVISION

[G.R. No. 189980. April 6, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO BACUS ALCUIZAR,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE DANGEROUS DRUG ITSELF CONSTITUTES THE VERY *CORPUS DELICTI* OF THE OFFENSE AND IN SUSTAINING A CONVICTION UNDER THE LAW, THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* MUST DEFINITELY BE SHOWN TO HAVE BEEN PRESERVED.— The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.

2. ID.; ID.; CHAIN OF CUSTODY RULE; REQUIRES THAT THE MARKING OF THE SEIZED ITEMS BE DONE IN THE PRESENCE OF THE APPREHENDED VIOLATOR AND IMMEDIATELY UPON CONFISCATION.— The chain of custody rule requires that the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.

3. ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE MARKING OF EVIDENCE IMMEDIATELY AFTER CONFISCATION CONSTITUTES A FIRST GAP IN THE CHAIN OF CUSTODY; CASE AT BAR.— SPO1 Agadier admitted that he only marked the seized items at the police station. While the rule allows marking of evidence to be done in the nearest police station, this contemplates a case of warrantless searches and seizures. In this case, the police officers were able to secure a search warrant prior to their operation. SPO1 Agadier did not offer an explanation or a justification on why he did not immediately mark the plastic packs of *shabu* seized inside appellant's house notwithstanding that an inventory receipt was even prepared while the police officers were still inside the house of appellant. They were given sufficient time and opportunity to prepare for its implementation. Thus, failure to comply with the marking of evidence immediately after confiscation constitutes a first gap in the chain of custody.

4. ID.; ID.; ID.; CUSTODY AND DISPOSITION OF CONFISCATED OR SEIZED DANGEROUS DRUGS; NON-COMPLIANCE WITH THE PRESCRIBED PROCEDURES THEREIN DOES NOT NECESSARILY RESULT IN THE CONCLUSION THAT THE IDENTITY OF THE SEIZED DRUGS HAS BEEN COMPROMISED.— Adherence to the guidelines under Section 21 of Republic Act No. 9165 relating to custody and disposition of confiscated or seized dangerous drugs accounts for a crucial link in the chain of custody rule. x x x But it was provided further under Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow as long as the prosecution can demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.

5. ID.; ID.; ID.; NOT COMPLIED WITH IN CASE AT BAR.— [T]he failure of the police officers to mark the dangerous drugs immediately after their seizure and the vague recollection of SPO1 Agadier concerning the custody of the drugs from the residence of appellant up to the time it was submitted to the crime laboratory constitute a huge and significant gap in the

chain of custody which substantially affects the identity of the *corpus delicti*.

6. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; THE PRESUMPTION THAT WHEN PROHIBITED DRUGS ARE FOUND IN A HOUSE OR BUILDING BELONGING TO AND OCCUPIED BY A PARTICULAR PERSON, SUCH PERSON IS IN POSSESSION OF SUCH DRUGS IN VIOLATION OF THE LAW, IS NOT CONCLUSIVE AND MAY BE REBUTTED BY CONTRARY EVIDENCE.— The Court of Appeals ruled that appellant is presumed to have been in possession of the prohibited drugs when they were found in his house. While this presumption may be true, it is certainly not conclusive and may be rebutted by contrary evidence. It is worthy to reiterate that this Court entertains serious doubts as to whether the prohibited drugs were indeed found in appellant's house considering that there were no other witnesses presented to prove it. And it is by the same doubt that constrains this Court to acquit appellant.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Noel D. Archival for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] of the Court of Appeals affirming the conviction of appellant Alberto Bacus Alcuizar (appellant)

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[1] Penned by Associate Justice Francisco P. Acosta with Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda, concurring. *Rollo*, pp. 2-16.

by the Regional Trial Court, Branch 17 of Cebu City[2] in Criminal Case No. CBU-66345 which found him guilty beyond reasonable doubt of illegal possession of dangerous drugs in violation of Section 11, Article II of Republic Act No. 9165.

Appellant was charged with violation of Sections 5 (illegal sale), 6 (maintaining a drug den), 11 (illegal possession) and 12 (illegal possession of dangerous drug paraphernalia) of Republic Act No. 9165 in Criminal Cases Nos. CBU-66343, CBU-66344, CBU-66345 and CBU-66346. He was tried in two (2) separate criminal proceedings. Criminal Cases Nos. CBU-66343 and CBU-66344 went to RTC Branch 15 of Cebu City (RTC Branch 15). The instant appeal involved the joint trial of Criminal Cases Nos. CBU-66345 and CBU-66346 before RTC Branch 17 of Cebu City (RTC Branch 17).

The Information relating to the criminal case appealed from pertains to illegal possession of *shabu* in violation of Section 11 of Republic Act No. 9165, and it reads:

> That on or about the 15th day of June, 2003 at about 2:00 o'clock in the afternoon, in *Barangay* Awayan, Municipality of Carcar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully, and feloniously have in his possession, custody, and control, the following: twenty-six (26) heat-sealed plastic packets containing white crystalline substance with a total weight of 0.52 grams; one (1) heat-sealed plastic pack containing 10.26 grams of white crystalline substance; two (2) strips of tin foil containing traces of white crystalline powder; and one (1) heat-sealed packet containing 0.02 gram of white crystalline substance, which when subjected to laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.[3]

Upon arraignment, appellant pleaded not guilty to the crime charged.

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[2] Presided by Judge Silvestre A. Maamo, Jr. Records, pp. 88-92.

[3] *Id.* at 1 and 88.

During the pre-trial conference, the defense admitted the genuineness, authenticity and truthfulness of the Forensic Chemistry Report. Both parties thus agreed to dispense with the testimony of the forensic chemist.[4]

The lone witness for the prosecution, SPO1 Meliton Agadier (SPO1 Agadier), testified on the following facts:

SPO1 Agadier, PO3 Rolando Gantuangco (PO3 Gantuangco), SPO1 Roland Navales (SPO1 Navales), who were all assigned at the Municipality of Carcar Police Station in Cebu City, secured a search warrant[5] from the court to search the house of appellant on the suspicion that the latter is selling and in possession of *shabu*. On 15 June 2003, they first conducted a buy-bust operation in *Sitio* Awayan. The subject of the operation is appellant.

SPO1 Agadier was standing in a store across the house of appellant. He witnessed the *poseur* buyer hand the marked money to appellant in exchange for one deck of *shabu*.[6] Upon the consummation of the sale, SPO1 Agadier immediately pursued appellant, who ran to his parents' house where he was eventually caught. After effecting the arrest, SPO1 Agadier and his team went back to the house of appellant to conduct a search.[7] The items recovered inside appellant's house were one (1) big heat-sealed transparent plastic pack with white crystalline substance believed to be *shabu*, two (2) packs containing thirteen (13) decks each of suspected *shabu*, three (3) disposable lighters, a *tooter*, a tin foil with traces of *shabu* residue, and an improvised lamp.[8]

SPO1 Agadier related that appellant, appellant's sister-in-law, one *barangay* captain, one *barangay tanod*, and several photographers were present during the implementation of the

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[4] *Id.* at 26.

[5] *Id.* at 8.

[6] TSN, 17 May 2005, p. 12.

[7] *Id.* at 5.

[8] Records, p. 6.

search warrant.[9] A receipt of the seized items was prepared and the *barangay* captain, *barangay tanod*, and two (2) photographers were asked to sign the receipt. The seized items were initially in the custody of SPO1 Navales. Upon reaching the police station, SPO1 Navales turned them over to SPO1 Agadier for marking. SPO1 Agadier prepared the request for laboratory examination before turning them over back to SPO1 Navales, who then delivered the items and the request to the Philippine National Police (PNP) Crime Laboratory.[10] Forensic Chemistry Report No. D-983-03 was issued confirming that the specimen submitted are positive for *shabu*.[11]

On 24 October 2006, the RTC Branch 15 of Cebu City,[12] acquitted appellant of the charge of illegal sale of *shabu* and maintaining a drug den in violation of Sections 5 and 6 of Republic Act No. 9165 in Criminal Cases Nos. CBU-66343 and CBU-66344.[13]

On 20 December 2006, RTC Branch 17 of Cebu City[14] rendered a Consolidated Judgment acquitting appellant in Criminal Case No. CBU-66346 for illegal possession of drug paraphernalia, but finding him guilty in Criminal Case No. CBU-66345 for illegal possession of *shabu*. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. CBU-66345, the Court finds accused ALBERTO BACUS ALCUIZAR *alias* "Albie" GUILTY beyond reasonable doubt of the offense charged therein (violation of Section 11 of RA 9165), and hereby sentences him to suffer life imprisonment and a fine of ₱400,000.00;

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[9] *Id.* at 7.

[10] TSN, 17 May 2005, p. 8.

[11] Records, p. 9.

[12] Presided by Judge Fortunato M. De Gracia, Jr.

[13] Records, pp. 106-110.

[14] Presided by Judge Silvestre A. Maamo, Jr. *Id.* at 88-92.

2. In Criminal Case No. CBU-66346, accused ALBERTO BACUS ALCUIZAR *alias* "Albie" is ACQUITTED based on reasonable doubt.[15]

The trial court held that the prosecution has clearly proven that appellant was guilty of illegal possession of dangerous drugs since the plastic packs of *shabu* were found inside his room. The trial court relied on the presumption that when prohibited drugs are found in a house or building belonging to and occupied by a particular person, such person is in possession of such drugs in violation of the law. Moreover, the trial court dismissed appellant's defense of denial as weak and debunked his claim that the evidence were planted as such was not supported by any evidence on record.[16]

On appeal, the Court of Appeals affirmed appellant's conviction.

The core issue in this appeal is whether the prosecution was able to establish beyond reasonable doubt the guilt of appellant. Appellant insists on his innocence and imputes to the trial court the following errors:

1. The Honorable Regional Trial Court erred in convicting the accused notwithstanding the failure of the prosecution to prove the very *corpus delicti* of the crime considering that the chain of custody of the same is unreliable;

2. The Honorable Regional Trial Court erred in convicting the accused despite the fact that the said conviction would be tantamount to violation of the constitutional right of the accused against double jeopardy;

3. The Honorable Regional Trial Court erred in convicting the accused by not taking into account some evidences of vital importance like the improper motive on the part of the police officers;

4. The Honorable Regional Trial Court erred [in] convicting the accused in spite of [the] failure of the prosecution to prove with moral certainty the guilt of the accused beyond reasonable doubt.[17]

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[15] *Id.* at 92.

[16] *Id.* at 90-91.

[17] CA *rollo*, p. 36.

The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.[18]

The chain of custody rule requires that the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.[19] In *Lopez v. People*[20] citing *Catuiran v. People*,[21] this Court held that:

> It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Indeed, it is from the testimony of every witness who handled the evidence from which a reliable

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[18] *People v. Denoman*, G.R. No. 171732, 15 August 2009, 596 SCRA 257, 267 citing *People v. Robles*, G.R. No. 177220, 24 April 2009, 586 SCRA 647, 655-656.

[19] *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194, 218.

[20] G.R. No. 184037, 29 September 2009, 601 SCRA 316.

[21] G.R. No. 175647, 8 May 2009, 587 SCRA 567.

assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.[22]

The aforesaid step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence and on allegations of robbery or theft.[23]

Appellant cites the failure of the police officer to mark the evidence immediately after purportedly taking it from him. This omission, appellant contends, renders the chain of custody dubious.

SPO1 Agadier admitted that he only marked the seized items at the police station. While the rule allows marking of evidence to be done in the nearest police station, this contemplates a case of warrantless searches and seizures.[24] In this case, the police officers were able to secure a search warrant prior to their operation. SPO1 Agadier did not offer an explanation or a justification on why he did not immediately mark the plastic packs of *shabu* seized inside appellant's house notwithstanding that an inventory receipt was even prepared while the police officers were still inside the house of appellant. They were given sufficient time and opportunity to prepare for its implementation. Thus, failure to comply with the marking of evidence immediately after confiscation constitutes a first gap in the chain of custody.

Appellant also points out the failure of the police officers to give or leave a copy of the inventory receipt upon the accused or any of his family members pursuant to Section 21 of Republic Act No. 9165.

Adherence to the guidelines under Section 21 of Republic Act No. 9165 relating to custody and disposition of confiscated

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[22] *Lopez v. People, supra* note 20 at 327.

[23] *People v. Sanchez, supra* note 19 at 218-219.

[24] *Dolera v. People*, G.R. No. 180693, 4 September 2009, 598 SCRA 484, 493-494.

or seized dangerous drugs accounts for a crucial link in the chain of custody rule. It provides:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> 1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

But it was provided further under Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow as long as the prosecution can demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.

SPO1 Agadier narrated that a certain photographer took pictures of the items seized from the house of appellant. However, the photograph/s do not appear on the records nor were they offered by the prosecution as evidence. Thus, the requirement of taking a photograph was not clearly proven. Anent the inventory receipt, while it was prepared and appeared on records, the police officers failed to provide appellant a copy of the inventory receipt. Appellant construed this omission as fatal.

This omission alone is not necessarily fatal to the cause of the prosecution. However, this Court cannot ignore the nagging doubt created in our mind with respect to the *barangay tanod*'s testimony pertaining to the inventory receipt which affects the integrity of the *corpus delicti* in general.

He testified:

Q: On June 15, 2003, could you please tell us whether you were there when the police officers of Carcar implemented the search warrant against him for violation of RA 9165, the Anti-Drugs Law?

A: We were there but we arrived late than the policemen.

Q: When you said we arrived at what place you are referring to, Mr. Witness?

A: In the house of Alberto Alcuizar.

Q: You said you were late. Why are you late, Mr. Witness? Why, are you not ready of your duties and responsibilities, preparedness in times of emergency?

A: We were late in going because we were only fetched by the *barangay* councilor. That is why we arrived late.

Q: Who is the *barangay* councilor you are referring to that allegedly fetched you?

A: *Barangay* Councilor Imperio.

Q: Nevertheless, Mr. Witness, when you arrived what did you observe there at the place of Alberto Alcuizar, if you remember?

A: When we arrived there we were provided with flashlights and we were told to assist them in looking for *shabu*.

Q: What happened next after you were given flashlights to look for *shabu*?

A: I was continuously looking but I did not find any.

Q: How about you (sic) co-*barangay tanod*, did he also recover or find something?

A: No, sir.

Q: How about the policemen, did they recover *shabu* in that house of Alberto Alcuizar, Mr. Witness?

A: When we arrived the alleged *shabu* were already on top of the table.

Q: You were only told by the police that there was *shabu* on top of the table?

A: No, we were not told by the policemen but we were told to sign before we left.

Q: What is the affixing of signature stands for according to the police?

A: He told us that the document we signed was to attest only that we were there and assist the apprehension. I do not know that it refers to the *shabu*.

Q: Meaning you thought all the while that there was *shabu* recovered inside the house?

A: I really thought but I saw some *shabu* on top of the table.

Q: It was only the policemen who pointed you the *shabu* on top of the table?

A: They did not also tell us, they just asked us to sign.

Q: They never told you that they were able to recover *shabu*?

A: No, sir.

Q: You only assumed that what was put on the table colored white is *shabu*, Mr. Witnes?

A: I only believe that it was the *shabu*.

Q: Nevertheless, Mr. Witness, you only went there not to the fact as witness to the recovery of *shabu*, you thought all the while you were there as witness wherein the policemen went there?

A: That is right.[25]

Note from the testimony of the *barangay tanod* that he and the *barangay* captain arrived later than the police officers. And

[25] TSN, 4 July 2006, pp. 3-4.

when they reached appellant's house, the alleged confiscated *shabu* were already on top of a table. He was merely asked to sign the inventory receipt, which he did without hesitation. As can be gleaned from his testimony, the *barangay tanod* did not witness how the police officers conducted their search and how they were able to discover the packets of *shabu* inside appellant's house. Aside from the *barangay tanod*, no other signatories in the receipt were presented by the prosecution to authenticate the document.

In *People v. Garcia*,[26] the Court enumerated several cases dealing with the legal repercussions of failing to comply with Section 21 of Republic Act No. 9165, thus:

> In *People v. Orteza*, the Court, in discussing the implications of the failure to comply with Paragraph 1, Section 21, Article II of R.A. No. 9165, declared:
>
> > In People v. Laxa, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*.
> >
> > The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.
> >
> > More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*.
>
> We reached the same conclusion in *People v. Nazareno* and *People v. Santos, Jr.*, and recently, in the cases of *People v. Dela Cruz* and

[26] G.R. No. 173480, 25 February 2009, 580 SCRA 259.

People v. De la Cruz where we again stressed the importance of complying with the prescribed procedure. We also held that strict compliance is justified under the rule that penal laws shall be construed strictly against the government, and liberally in favor of the accused.[27]

The first gap in the chain of custody was compounded by the vague recollection of SPO1 Agadier regarding the transfer of custody of the *shabu*. This second gap in the chain of custody was evident in SPO1 Agadier's statements, thus:

Q: After the recovery all these items by you and officer Gantuangco, what happened next?

A: After the witnesses signed the application we brought the accused to our police station.

Q: Who have custody of all the items recovered from the residence of the accused and when you brought him to the police station?

A: I turned over to the recorder SPO1 Roland Navales.

Q: And at the police station, please tell us what happened there?

A: After that SPO1 Navales entered in the police blotter and he turned over the evidence to me for marking to the crime laboratory.

Q: You mentioned that the items were also turned over to you by Navales for marking so that you can have this request for the crime laboratory, was that request reduced into writing?

A: Yes, sir.

Q: Will you please go over this Mr. Witness and tell us if this is the one?

A: This is the request I prepared.

FISCAL PARADIANG

Q: Please tell us who sign this request?

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[27] *Id.* at 269-270.

A: Chief of Police, PSI Edgardo Sanchez Aldemita.

We request that the written request for laboratory examination be marked as Exhibit H; the signature of the requesting party by PSI Edgar Sanchez Aldemita be sub marked as Exhibit H-1.

Q: After making the request, what happened?

A: It was SPO1 Navales who delivered the items and the request for the PNP Crime Laboratory.[28]

Based on his testimony, it was not indicated who had initial control and custody of the plastic packs of *shabu* upon their confiscation. SPO1 Agadier merely claims that he turned them over to SPO1 Navales without specifying whether the latter received it while they were still inside the appellant's house or at the police station. It is also not clear who was in possession of the plastic packs of *shabu* while in transit. Moreover, SPO1 Navales did not testify to confirm the statement of SPO1 Agadier.

Verily, the failure of the police officers to mark the dangerous drugs immediately after their seizure and the vague recollection of SPO1 Agadier concerning the custody of the drugs from the residence of appellant up to the time it was submitted to the crime laboratory constitute a huge and significant gap in the chain of custody which substantially affects the identity of the *corpus delicti*.

To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[29]

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[28] TSN, 17 May 2005, pp. 8-9.

[29] *People v. Partoza*, G.R. No. 182418, 8 May 2009, 587 SCRA 809, 816 citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 451; *People v. Cruz*, G.R. No. 185381, 16 December 2009, 608 SCRA 350, 364; *People v. Gutierrez*, G.R. No. 177777, 4 December 2009, 607 SCRA 377, 390-391.

The Court of Appeals ruled that appellant is presumed to have been in possession of the prohibited drugs when they were found in his house. While this presumption may be true, it is certainly not conclusive and may be rebutted by contrary evidence. It is worthy to reiterate that this Court entertains serious doubts as to whether the prohibited drugs were indeed found in appellant's house considering that there were no other witnesses presented to prove it. And it is by the same doubt that constrains this Court to acquit appellant.

At this juncture, it is no longer necessary to discuss the other assigned errors.

WHEREFORE, the 4 December 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00716 affirming the conviction of the Regional Trial Court, Branch 17, Cebu City in Criminal Case No. CBU-66345 for illegal possession of *shabu* under Section 11 of Republic Act No. 9165, is hereby *REVERSED* and *SET ASIDE*. Appellant *ALBERTO BACUS ALCUIZAR* is declared *ACQUITTED* and ordered immediately *RELEASED* from detention, unless he is confined for any other lawful cause.

The Director of the Bureau of Corrections is *DIRECTED* to *IMPLEMENT* this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

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

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— If CIAC's jurisdiction can neither be enlarged nor diminished by the parties, it cannot be subjected to a condition precedent. *(Id.)*

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— May be imposed when the crime was committed with one or more aggravating circumstances. (People *vs*. Villarico, Sr., G.R. No. 158362, April 04, 2011) p. 399

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Nominal damages — May be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. (Regala *vs*. Carin, G.R. No. 188715, April 06, 2011) p. 782

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— Appointment as to the manner in which it is made can either be regular or ad interim; a regular appointment is made while Congress is in session, while an ad interim appointment is one issued during the recess of Congress. *(Id.)*

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— Defined as any person, natural or juridical, licensed to do business in the Philippines, engaged directly or indirectly in the production, manufacture or trade of products or services, which earns at least fifty percent (50%) of its normal operating revenues from the sale of its products or services abroad for foreign currency. *(Id.)*

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— Where the contract is declared void, the officers entering into the contract shall be liable to the contract or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties. *(Id.)*

(PNR *vs*. Kanlaon Construction Enterprises Co., Inc., G.R. No. 182967, April 06, 2011; *Sereno, J., concurring opinion*) p. 771

HEARSAY RULE, EXCEPTIONS TO

Dying declaration — To be admissible, four requisites must concur: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) at the time the declaration was made, the declarant must be under the consciousness of an impending death; (c) the declarant is competent as a witness; and (d) the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim. (People *vs*. Maglian, G.R. No. 189834, March 30, 2011) p. 338

Res gestae — Refers to those circumstances which are the undersigned incidents of a particular litigated act and which are admissible when illustrative of such act. (People *vs*. Villarico, Sr., G.R. No. 158362, April 04, 2011) p. 399

— To be admissible in evidence, the following must concur: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statements were made before the declarant had time to contrive or devise; and (c) the statements concerned the occurrence in question and its immediately attending circumstances. *(Id.)*

INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (R.A. NO. 8293)

Confusion of marks and trade names — Has two types, viz.; (a) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (b) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration, is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent. (Skechers, U.S.A., Inc. *vs.* Inter Pacific Industrial Trading Corp., and/or Inter Pacific Trading Corp., G.R. No. 164321, March 28, 2011) p. 11

Dominancy test — Focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. (Skechers, U.S.A., Inc. *vs.* Inter Pacific Industrial Trading Corp., and/or Inter Pacific Trading Corp., G.R. No. 164321, March 28, 2011) p. 11

Holistic or totality test — Necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. (Skechers, U.S.A., Inc. *vs.* Inter Pacific Industrial Trading Corp., and/or Inter Pacific Trading Corp., G.R. No. 164321, March 28, 2011) p. 11

Infringement of trademark — The defendants in cases of infringement do not normally copy but only make colorable changes. (Skechers, U.S.A., Inc. *vs.* Inter Pacific Industrial Trading Corp., and/or Inter Pacific Trading Corp., G.R. No. 164321, March 28, 2011) p. 11

— The difference in price is not a complete defense. *(Id.)*

— The essential element is that the infringing mark is likely to cause confusion. *(Id.)*

Unfair competition — Even if not all the details are identical, as long as the general appearance of the two products are such that any ordinary purchaser would be deceived, the imitator should be liable. (Skechers, U.S.A., Inc. *vs.* Inter Pacific Industrial Trading Corp., and/or Inter Pacific Trading Corp., G.R. No. 164321, March 28, 2011) p. 11

JUDGES

Administrative charges against a judge — An accusation of extortion and rendering an unjust judgment or order against a judge must be proven beyond reasonable doubt. (Del Mar-Schuchman *vs.* Judge Cacatian, A.M. No.RTJ-11-2279, April 06, 2011) p. 623

Impropriety and conduct unbecoming of a judge — Transacting with a party in facilitating the transfer of the titles is in effect engaging in a prohibited commercial transaction. (Del Mar-Schuchman *vs*. Judge Cacatian, A.M. No. RTJ-11-2279, April 06, 2011) p. 623

Motion to inhibit a judge — Shall be denied if filed after the judge has already given an opinion on the merits of the case. (Bangayan *vs.* RCBC, G.R. No. 149193, April 04, 2011) p. 360

JUDICIAL DEPARTMENT

Judicial function — Defined as the exercise of the judicial faculty or office; it also means the capacity to act in a specific way which appertains to the judicial power, as one of the powers of government. (Sps. Yusay *vs*. CA, G.R. No. 156684, April 06, 2011) p. 634

Judicial review — When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: (a) the existence of an actual and appropriate case; (b) the existence of personal and substantial interest on the part of the party raising the constitutional question; (c) recourse to judicial review is made at the earliest opportunity; and (d) the constitutional question is the *lis mota* of the case. (Hon. General *vs*. Hon. Urro, G.R. No. 191560, March 29, 2011) p. 132

JUDICIAL NOTICE

Coverage — The management contract entered into by a party and the Philippine Ports Authority is not considered an official act of the Executive Department and clearly not among the matters which courts can take judicial notice of. (Asian Terminals, Inc. *vs*. Malayan Insurance, Co., Inc., G.R. No. 171406, April 04, 2011) p. 473

JURISDICTION

Concept — Conferred by law and any judgment, order or resolution issued without jurisdiction is void and cannot be given any effect. (Magno *vs*. People, G.R. No. 171542, April 06, 2011) p. 726

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Elements of the crime are: (a) the offender is a private individual; (b) he kidnaps or detains another or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping is illegal; and (d) in the commission of the offense, any of the following circumstances are present: (1) the kidnapping or detention lasts for more than 3 days; or (2) it is committed by simulating public authority; or (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. (People *vs*. Montanir, G.R. No. 187534, April 04, 2011) p. 535

KIDNAPPING WITH HOMICIDE

Commission of — Punishable by death. (People *vs*. Montanir, G.R. No. 187534, April 04, 2011) p. 535

LABOR RELATIONS

Collective bargaining agreement — Considered as the law between the parties and compliance therewith is mandated by the express policy of the law. (Supreme Steel Corp. *vs*. Nagkakaisang Manggagawa ng Supreme Independent Union, G.R. No. 185556, March 28, 2011) p. 66

LAND REGISTRATION

Torrens Certificate of Title — An evidence of indefeasible title of property in favor of the person whose name the title appears. (Santos *vs*. National Statistics Office, G.R. No. 171129, April 06, 2011) p. 708

— The title holder is entitled to all the attributes of ownership of the property, including possession, subject only to limits imposed by law. *(Id.)*

LETTERS OF CREDIT

"Independence principle" in letter of credit — Assures the seller or the beneficiary of prompt payment independent of the breach of the main contract and precludes the issuing bank from determining whether the main contract is actually accomplished or not. (Bangayan *vs*. RCBC, G.R. No. 149193, April 04, 2011) p. 360

LIS MOTA

Doctrine of — Given the presumed validity of an executive act, the petitioner who claims otherwise has the burden of showing first that the case cannot be resolved unless the constitutional question he raised is determined by the Court. (Hon. General *vs*. Hon. Urro, G.R. No. 191560, March 29, 2011) p. 132

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Expropriation proceedings — The Code required the city to pass an ordinance, not adopt a resolution, for the purpose of initiating an expropriation proceeding. (Sps. Yusay *vs*. CA, G.R. No. 156684, April 06, 2011) p. 634

MAGNA CARTA OF SMALL ENTERPRISES (R.A. NO. 6977)

Cottage industry — Nature of activity and capitalization or asset requirement are factors in determining whether an enterprise is a cottage industry. (Sterling Selections Corp. *vs*. Laguna Lake Dev't. Authority, G.R. No. 171427, March 30, 2011) p. 243

MITIGATING CIRCUMSTANCES

No intention to commit so grave a wrong — Addresses to the intention of the offender at the particular moment when the offender executes or commits the criminal act. (People *vs*. Maglian, G.R. No. 189834, March 30, 2011) p. 338

Voluntary surrender — The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. (People *vs*. Maglian, G.R. No. 189834, March 30, 2011) p. 338

— The following requisites must be present: (a) the offender has not been actually arrested; (b) the offender surrendered himself to a person in authority or the latter's agent; and (c) the surrender was voluntary. *(Id.)*

MUSLIM PERSONAL LAWS OF THE PHILIPPINES, CODE OF (P.D. NO. 1083)

Application — A marriage contracted by a Muslim male prior to the effectivity of the Code in accordance with non-Muslim law shall be considered as one contracted under Muslim law provided the spouses register their mutual desire to this effect. (Juliano-Llave *vs*. Rep. of the Phils., G.R. No. 169766, March 30, 2011) p. 203\

OMBUDSMAN

Jurisdiction — Includes a complaint against a government employee for an act involving a private deal. (Samson *vs*. Restrivera, G.R. No. 178454, March 28, 2011) p. 45

Order of dismissal — Immediately executory. (Moro *vs*. Del Castillo, Jr., G.R. No. 184980, March 30, 2011) p. 331

OVERSEAS EMPLOYMENT

Death of a seaman during the term of employment — Makes the employer liable to his heirs for death compensation benefits. (Pantollano *vs*. Korphil Shipmanagement and Manning Corp., G.R. No. 169575, March 30, 2011) p. 189

PARRICIDE

Commission of — Civil indemnity of accused, cited. (People *vs*. Maglian, G.R. No. 189834, March 30, 2011) p. 338

— Imposable penalty. *(Id.)*

PARTIES TO CIVIL ACTIONS

Death of a party — An action survives upon the death of a party where it involves property rights. (Carabeo *vs*. Sps. Dingco, G.R. No. 190823, April 04, 2011) p. 565

— Upon the death of a party, the counsel was immediately divested of authority to represent the deceased client. *(Id.)*

— When the trial court was not informed of a party's death, it may not be faulted for proceeding to render judgment without ordering his substitution; its judgment is thus valid and binding upon deceased's representatives or successors-in-interest, insofar as his interest in the property subject of the action is concerned. (Carabeo *vs*. Sps. Dingco, G.R. No. 190823, April 04, 2011) p. 565

PRESUMPTIONS

Presumption of death — When declared missing, a person is presumed dead only after the lapse of four years from

such declaration. (Pantollano *vs*. Korphil Shipmanagement and Manning Corp., G.R. No. 169575, March 30, 2011) p. 189

Presumption on official entries — Entries in the police or barangay blotter are both conclusive proof of the truth of such entries. (Beltran, Jr. *vs*. CA, G.R. No. 181355, March 30, 2011) p. 296

PROHIBITION

Excess of jurisdiction — Signifies that the court, board, or officer has jurisdiction over a case but has transcended such jurisdiction or acted without any authority. (Sps. Yusay *vs*. CA, G.R. No. 156684, April 06, 2011) p. 634

Function of — To prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice. (Sps. Yusay *vs*. CA, G.R. No. 156684, April 06, 2011) p. 634

Grave abuse of discretion — To be a ground for prohibition, the petitioner must first demonstrate that the tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, has exercised its or his power in an arbitrary or despotic manner, by reason of passion or personal hostility, which must be so patent and gross as would amount to an evasion, or to a virtual refusal to perform the duty enjoined or to act in contemplation of law. (Sps. Yusay *vs*. CA, G.R. No. 156684, April 06, 2011) p. 634

Petition for — Does not lie against expropriation. (Sps. Yusay *vs*. CA, G.R. No. 156684, April 06, 2011) p. 634

Writ of — Directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy and adequate remedy in the ordinary course of business. (Sps. Yusay *vs*. CA, G.R. No. 156684, April 06, 2011) p. 634

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal property — Cannot be alienated or encumbered by a spouse without the consent, express or implied, of the other spouse, however, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse. (Ros *vs*. PNB-Laoag Branch, G.R. No. 170166, April 06, 2011) p. 696

— Shall be liable for debts contracted by the husband for and in the exercise of the industry or profession by which he contributes to the support of the family. *(Id.)*

PROSECUTION OF OFFENSES

Information — The main purpose of requiring the various elements of the crime to be set forth in the information is to enable the accused to adequately prepare her defense. (People *vs*. Cristobal, G.R. No. 159450, March 30, 2011) p. 164

PUBLIC OFFICERS AND EMPLOYEES

Appointment — A person who accepts appointment in an acting capacity is estopped from claiming that he was permanently appointed. (Hon. General *vs*. Hon. Urro, G.R. No. 191560, March 29, 2011) p. 132

Conduct of — Service with loyalty, integrity, and efficiency is required of all public officers and employees who must, at all times be accountable to the people. (OCA *vs*. Atty. Lometillo, A.M. No. P-09-2637, March 29, 2011) p. 106

Conduct prejudicial to the best interest of the service — Committed in case respondent offered her services for facilitation of the land transfer papers and representing her relatives, had the power, influence and capacity to facilitate the titling of subject property. (Hernando *vs*. Bengson, A.M. No. P-09-2686, March 28, 2011) p. 1

— Punishable by suspension (6 months and I day to 1 year) for the first offense and the penalty of dismissal for the second offense. *(Id.)*

Conduct unbecoming of a public officer — Established in case of reneging on the promise to return amount accepted relative to an aborted transaction. (Samson *vs*. Restrivera, G.R. No. 178454, March 28, 2011) p. 45

— Imposable penalty. *(Id.)*

Ethical Standards for Public Servants (R.A. No. 6713) — Defines professionalism as the conduct, aims, or qualities that characterize or mark a profession. (Samson *vs*. Restrivera, G.R. No. 178454, March 28, 2011) p. 45

Grave misconduct — Misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules. (Samson *vs*. Restrivera, G.R. No. 178454, March 28, 2011) p. 45

Misconduct — Defined as a transgression of an established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. (Samson *vs*. Restrivera, G.R. No. 178454, March 28, 2011) p. 45

— To constitute an administrative offense, it should be related to or connected with the performance of the official function and duties of a public officer. (Hernando *vs*. Bengson, A.M. No. P-09-2686, March 28, 2011) p. 1

QUALIFIED THEFT

Commission of — Impossible penalty. (People *vs*. Cristobal, G.R. No. 159450, March 30, 2011) p. 164

QUALIFYING CIRCUMSTANCES

Treachery— There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. (People *vs*. Villarico, Sr., G.R. No. 158362, April 04, 2011) p. 399

QUO WARRANTO

Petition for — A remedy to try disputes with respect to the title to a public office. (Hon. General *vs*. Hon. Urro, G.R. No. 191560, March 29, 2011) p. 132

— May be filed against one who usurps, intrudes into, or unlawfully holds or exercises a public office. (Moro *vs*. Del Castillo, Jr., G.R. No. 184980, March 30, 2011) p. 331

RAPE

Carnal knowledge as an element —When the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of carnal knowledge. (People *vs*. Saludo, G.R. No. 178406, April 06, 2011) p. 738

Commission of — Civil liabilities of accused, cited. (People *vs*. Saludo, G.R. No. 178406, April 06, 2011) p. 738

Intimidation as an element — Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear. (People *vs*. Saludo, G.R. No. 178406, April 06, 2011) p. 738

Prosecution of — A rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. (People *vs*. Saludo, G.R. No. 178406, April 06, 2011) p. 738

— Delay in reporting the rape incident does not affect the credibility of the minor-victim. *(Id.)*

— There is no typical reaction or norm of behavior among rape victims. *(Id.)*

— Youth and immaturity are generally badges of truth and sincerity. *(Id.)*

Rape with use of deadly weapon — Whenever the crime of rape is committed with the use of a deadly weapon, the imposable penalty is *reclusion perpetua* to death. (People *vs*. Saludo, G.R. No. 178406, April 06, 2011) p. 738

SALES

Object of sale — The requirement that a sale must have for its object a determinate thing is satisfied as long as, at the time the contract is entered into, the object of the sale is capable of being made determinate without the necessity of a new or further agreement between the parties. (Carabeo *vs*. Sps. Dingco, G.R. No. 190823, April 04, 2011) p. 565

Purchaser in good faith — One who buys the property of another, without notice that some other person has a right to, or interest in, such property, and pays the full and fair price for it at the time of such purchase or before he has notice of the claim or buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. (Tamani *vs*. Salvador, G.R. No. 171497, April 04, 2011) p. 495

SANDIGANBAYAN

Exclusive appellate jurisdiction — Covers resolutions issued by the Regional Trial Courts in the exercise of their own original jurisdiction or of their appellate jurisdiction. (Magno *vs*. People, G.R. No. 171542, April 06, 2011) p. 726

SOCIAL LEGISLATION

Diminution of benefits — Present when it is shown that: (a) the grant of benefit is founded on a policy or has ripened into a practice over a long period of time; (b) the practice is consistent and deliberate; (c) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (d) the diminution or discontinuance is done unilaterally by the employer. (Supreme Steel Corp. *vs*. Nagkakaisang Manggagawa ng Supreme Independent Union, G.R. No. 185556, March 28, 2011) p. 66

SOCIAL SECURITY LAW (R.A. NO. 1161)

Beneficiaries — A wife who is already separated de facto from her husband cannot be said to be dependent for support

upon the husband, absent any showing to the contrary. (Social Security Commission *vs*. Favila, G. R. No. 170195, March 28, 2011) p. 25

— For a spouse to qualify as a primary beneficiary, he or she must not only be a legitimate spouse but also one who is dependent upon the member for support. *(Id.)*

— Whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. *(Id.)*

STATE

Principle of non-suability of the state — The doctrine must be fairly observed and the State should not avail itself of this prerogative to take undue advantage of parties that may have legitimate claims against it. (Commissioner of Customs *vs*. AGFHA, Inc., G.R. No. 187425, March 28, 2011) p. 94

STATEMENT OF ASSETS, LIABILITIES, AND NETWORTH (SALN)

Principle of expression unius est exclusion alterius — Does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only. (Sterling Selections Corp. *vs*. Laguna Lake Dev't. Authority, G.R. No. 171427, March 30, 2011) p. 243

— Should be applied only as a means of discovering legislative intent which is not otherwise manifest. *(Id.)*

SUPREME COURT

Disciplinary authority over courts and personnel — While the court has the power to regulate official conduct and, to a certain extent, private conduct, it is not within its authority to decide on matters touching on employee's personal lives, especially those that will affect their family's future. (Abanag *vs*. Mabute, A.M. No. P-11-2922, April 04, 2011) p. 354

SUPREME COURT, INTERNAL RULES

Second motion for reconsideration — Omission to take the required two-thirds vote of the en banc's actual membership is fatal. (Apo Fruits Corp. vs. Land Bank of the Phils., G.R. No. 164195, April 05, 2011; *Abad, J., dissenting opinion*) p. 572

— Selective invocation of the Internal Rules on the voting requirement to resolve the second motion for reconsideration is unhealthy and will undermine the moral and legal force of the court's decision. (Apo Fruits Corp. *vs.* Land Bank of the Phils., G.R. No. 164195, April 05, 2011; *Sereno, J., concurring opinion*) p. 572

— Taking of "a vote" is required; mere assumption of concurrence is not equivalent to taking of a vote. (Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, April 05, 2011; *Abad, J., dissenting opinion*) p. 572

— The Court shall not entertain a second motion for reconsideration and any exception to the Rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. (Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, April 05, 2011) p. 572

— The participation of the majority of the members of the Court in the deliberation satisfies the constitutional requirement to support a ruling and overrides any concern about the lack of the super-majority vote required by the Court's Internal Rules. (Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, April 05, 2011; *Sereno, J., concurring opinion*) p. 572

SURETYSHIP

Contract of suretyship — Mere absence of notarization does not necessarily render the surety agreement invalid. (Bangayan *vs.* RCBC, G.R. No. 149193, April 04, 2011) p. 360

— The fact that the annex of the surety agreement does not bear petitioner's signature is not sufficient to invalidate the main agreement altogether. *(Id.)*

TARIFF AND CUSTOMS CODE

Seizure and detention of shipment — The Commissioner of Customs is liable for the value of the lost shipment under his custody at its acquisition cost at the time of actual payment. (Commissioner of Customs *vs*. AGFHA, Inc., G.R. No. 187425, March 28, 2011) p. 94

TAX REFUND

Claim for tax refund — Strictly construed against the taxpayer. (Microsoft Phils., Inc. *vs.* Commissioner of Internal Revenue, G.R. No. 180173, April 06, 2011) p. 762

Refund of unutilized tax credits — May not be done once the option to carry-over the excess income tax payments to succeeding taxable years until fully utilized has been made. (Commissioner of Internal Revenue *vs*. PL Management Int'l.Phils., Inc., G.R. No. 160949, April 04, 2011) p. 431

THEFT

Animus lucrandi or intent to gain — An internal act which can be established through the overt acts of the offender. (Beltran, Jr. *vs.* CA, G.R. No. 181355, March 30, 2011) p. 296

Commission of — Although the body of the hand tractor was subsequently recovered and only the engine was taken, it does not necessarily follow that the crime committed was only theft of an engine. (Beltran, Jr. *vs*. CA, G.R. No. 181355, March 30, 2011) p. 296

— The elements of the crime of theft are: (a) that there be taking of personal property; (b) that said property belongs to another; (c) that the taking be done with intent to gain; (d) that the taking be done without the consent of the owner; and (e) that the taking be accomplished without the use of violence against or intimidation or person or force upon things. *(Id.)*

— The penalty to be imposed shall be based on the value of the thing stolen. *(Id.)*

TRUST

*General princ*iple — Equity converts the holder of property right as trustee for the benefit of another if the circumstances of its acquisition makes the holder ineligible in good conscience to hold and enjoy it. (Juan *vs*. Yap, Sr., G.R. No. 182177, March 30, 2011) p. 321

Implied trust — A remedy against unjust enrichment. (Juan *vs*. Yap, Sr., G.R. No. 182177, March 30, 2011) p. 321

VALUE-ADDED TAX (VAT)

Invoicing requirement — The VAT-registered taxpayer must comply with the invoicing requirements including the imprinting of the words "zero-rated" in its VAT official receipts and invoices. (Microsoft Phils., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 180173, April 06, 2011) p. 762

Refunds or tax credits of input tax on zero-rated sale — Failure to print the word "Zero-Rated" on the sales invoices is fatal. (Microsoft Phils., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 180173, April 06, 2011) p. 762

VOID MARRIAGES

Declaration of nullity of a void marriage — A marriage contracted by a Muslim male prior to the effectivity of the Code of Muslim Personal Laws of the Philippines in accordance with non-Muslim law shall be considered as one contracted under Muslim law provided the spouses register their mutual desire to this effect. (Juliano-Llave *vs*. Rep. of the Phils., G.R. No. 169766, March 30, 2011) p. 203

— Children of the deceased who have property rights as an heir are considered real parties-in-interest in action for the declaration of nullity of a subsequent marriage. *(Id.)*

— Lack of participation of a public prosecutor does not invalidate the proceedings in the trial court. *(Id.)*

WITNESSES

Credibility of — Findings of trial court are entitled to great respect and accorded the highest consideration by the appellate court; exceptions. (People *vs*. Saludo, G.R. No. 178406, April 06, 2011) p. 738

(People *vs*. Montanir, G.R. No. 187534, April 04, 2011) p. 535

(People *vs*. Dela Cruz, G.R. No. 177324, March 30, 2011) p. 275

— Minor variances in the details of the witnesses' accounts are badges of truth rather than indicia of falsehood. (People *vs*. Montanir, G.R. No. 187534, April 04, 2011) p. 535

Expert witness — While credentials of an expert witness play a factor in the evidentiary and persuasive weight of his testimony, the same cannot be the sole factor in determining its value; the judge must conduct his own independent examination of the evidence under scrutiny. (Tamani *vs*. Salvador, G.R. No. 171497, April 04, 2011) p. 495

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