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OF THE

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FROM

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 154042. April 11, 2011]

JOSE T. TUBOLA, JR., *petitioner, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS OR PROPERTY; PRESUMED WHERE ACCOUNTABLE PUBLIC OFFICER FAILED TO HAVE THE SAME DULY FORTHCOMING UPON DEMAND. —** Article 217 of the Revised Penal Code provides: Art. 217. *Malversation of public funds or property. Presumption of malversation.* x x x **The failure of a public officer to have duly forthcoming any public fund or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.**

2. **ID.; ID.; ELEMENTS. —** The elements of malversation of public funds are thus: 1. that the offender is a public officer; 2. that he had the custody or control of funds or property by reason of the duties of his office; 3. that those funds or property were public funds or property for which he was accountable; and 4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHT TO DUE PROCESS; NOT VIOLATED JUST BECAUSE**

THE SANDIGANBAYAN JUSTICES ACTIVELY PARTICIPATED IN THE TRIAL. — Petitioner's claim of violation of his right to due process *vis-à-vis* the Sandiganbayan Justices' active "participation" during the trial fails too. For he has not specified any instance of supposed bias of the Justices, or cited what questions adversely affected him. The record does not reflect any question or objection raised by petitioner's counsel during the trial to the Justices' questions or the tenor or manner they were propounded. Nor does the record reflect any move to inhibit the Justices if petitioner perceived that they were biased against him. That a magistrate may propound clarificatory questions to secure a full and clear understanding of the facts in the case is not proscribed.

APPEARANCES OF COUNSEL

Tabalingcos & Associates Law Offices for petitioner.

D E C I S I O N

CARPIO MORALES, *J.*:

Jose Tubola, Jr. (petitioner) appeals the December 7, 2000 Decision[1] and June 10, 2002 Resolution of the Sandiganbayan in Criminal Case No. 12015 which found him guilty of Malversation of Public Funds penalized under Article 217 of the Revised Penal Code, committed as follows:

That within the period from June 25, 1982 up to November 8, 1982, and for sometime prior thereto, in Iloilo City, Philippines and within the jurisdiction of this Honorable Court, the said accused who was a duly appointed cashier/collecting officer of the National Irrigation System, Iloilo City and as such was an accountable public officer for public funds that were in his official custody by reason of his official position, did then and there, wilfully, unlawfully and feloniously, with grave abuse of confidence **misappropriate and convert to his own personal use and benefit** the amount of NINE

[1] *Rollo,* pp. 38-56. Penned by Associate Justice Anacleto D. Badoy, Jr. (now retired) with Associate Justices Minita V. Chico-Nazario (now a retired member of the Court) and Ma. Cristina Cortez-Estrada (now retired).

(sic) THREE THOUSAND FIFTY ONE PESOS AND EIGHTY- EIGHT CENTAVOS ₱93,051.88 to the damage and prejudice of the government.

CONTRARY TO LAW.[2] (emphasis and underscoring supplied)

Petitioner was the cashier of the National Irrigation Administration (NIA)-Aganan, Sta. Barbara River Irrigation System in Iloilo City. On November 8, 1982, Commission on Audit (COA) State Auditing Examiners Yvonne Gotera (Gotera) and Theresita Cajita (Cajita) conducted an audit examination of petitioner's account which indicated a shortage of ₱93,051.88.[3]

Gotera and Cajita thus sent a letter of demand dated November 23, 1982 to petitioner directing him to account for the shortage.[4] Petitioner refused to receive the letter, however, hence, Gotera and Cajita sent it by registered mail.[5]

Petitioner was thereupon charged of committing malversation of public funds before the Sandiganbayan to which he pleaded "not guilty."[6]

By the account of Gotera, the lone witness for the prosecution, petitioner had an account balance of **₱30,162.46 prior to June 25, 1982**; that from June 25 to November 8, 1982, the date petitioner's account was audited, his cash collections totaled **₱347,995.64**; that his remittances from June 25 to November 8, 1982 totaled ₱285,105.41; and that the total collections less total remittances amounted to ₱93,051.88 as of November 8, 1982.[7]

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[2] Records, Volume I, p. 1; Information dated November 25, 1986.

[3] Report of Examination; Exhibit "A", Folder of Exhibits.

[4] Exhibit "C", Folder of Exhibits.

[5] Exhibits "C-1" and "C-2", Folder of Exhibits.

[6] Records, Vol. I, p. 207.

[7] TSN, August 26, 1988, p. 11.

Still by Gotera's account, the audit team found in petitioner's drawer "*vales*/chits" or promissory notes or receivables signed by NIA employees involving the total amount of ₱79,044.51.[8]

Petitioner, who claimed that he was assigned as cashier since 1978 and was also in charge of payment of salaries of more than 2,000 field employees in the NIA Jalaur Project, declared that his task of keeping the collected irrigation fees was temporarily assigned to Editha Valeria (Valeria) upon instruction of his superior, Regional Director Manuel Hicao,[9] for he (petitioner) was also handling the payroll of around 2,000 employees.

Petitioner further declared that no accounting of the collected fees was undertaken since he trusted Valeria, who directly remitted them to the bank, after he signed the statement of collection without reading the contents thereof. [10]

Petitioner presented "*vales*" and "chits" involving the total amount of ₱115,661.66 representing loans extended by Valeria to certain NIA employees and even COA auditors.[11] And he identified "chits" and "*vales*" dated 1975 to 1981 inclusive representing loans extended *prior* to the audit period.[12]

By Decision of December 7, 2000,[13] the Sandiganbayan convicted petitioner as charged, disposing as follows:

> WHEREFORE, the guilt of the accused, JOSE TUBOLA, JR., having been proven beyond reasonable doubt, the Court hereby **CONVICTS** him of the crime of Malversation of Public Funds penalized under Article 217 of the Revised Penal Code. Appreciating in his favor the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same, and applying the

---

[8] TSN, November 22, 1988, pp. 5-6.

[9] TSN, Oct. 11, 1990, pp. 6-9.

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

[11] *Id.* at 33-34.

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

[13] *Rollo*, pp. 38-56.

Indeterminate Sentence Law, the accused is hereby sentenced to suffer the indeterminate penalty of TEN (10) years and ONE (1) day of *Prision Mayor* as Minimum, to SEVENTEEN (17) years, FOUR (4) months of *Reclusion Temporal* as Maximum, and the accessory penalties provided for by law.

He is likewise ordered to **indemnify** the Republic of the Philippines the amount of Ninety Three Thousand Fifty One Pesos and Eighty Eight Centavos (₱93,051.88); to pay a **fine** in the same amount, which is the amount of money malversed and the costs of suit, and finally to suffer perpetual disqualification to hold public office.

SO ORDERED.[14] (Capitalization, italics and emphasis in the original)

His motion for reconsideration having been denied,[15] petitioner lodged the present appeal, imputing error on the Sandiganbayan for

I

. . . CONCLUD[ING] THAT [HE] FAILED TO REBUT THE PRESUMPTION UNDER ARTICLE 217 OF THE REVISED PENAL CODE . . .

II

. . . CONCLUDING THAT [HE] HAS COMMITTED INEXCUSABLE NEGLIGENCE IN DELEGATING THE CUSTODY OF THE ACCOUNT TO [AN]OTHER PERSON.

III

. . . RENDERING JUDGMENT OF CONVICTION NOTWITHSTANDING THE FACT THAT IT HAS BEEN CLEARLY ESTABLISHED THAT [HE] IS NOT AN ACTUAL AND POTENTIAL WRONGDOER.

IV

. . . VIOLAT[ING] [HIS] BASIC CONSTITUTIONAL RIGHT TO DUE PROCESS WHEN IT ACTIVELY TOOK PART IN THE

---

[14] *Id.* at 55.

[15] Resolution of June 10, 2002, pp. 57-59.

QUESTIONING OF THE ACCUSED WHEN HE WAS PRESENTED AS A WITNESS.[16]

To petitioner, the evidence adduced at the trial had overcome the legal presumption that he put the missing funds to his personal use. There is, he argues, "incontrovertible fact that [he] ha[d] not received any single centavo in the form of irrigation fees" since the collections were actually received by Valeria.[17]

According to petitioner, he being the superior of Valeria, he had to rely on her honesty and competence in the performance of her duties. He cites *Arias v. Sandiganbayan,*[18] which ruled that a head of office is not required to examine every single detail of any transaction from its inception until it is finally approved, to deem it no longer necessary for him to examine all the details each time a remittance of the fees was made.

Petitioner even posits that the Sandiganbayan was unsure whether he was guilty of malversation intentionally or through negligence.

In fine, petitioner insists that as the primary task of collecting the irrigation fees was the responsibility of Valeria, he cannot be faulted for negligence.[19]

Further, petitioner posits that he was neither an actual or potential wrongdoer and, absent criminal intent, he should not be convicted with the full harshness of the law.[20]

Finally, petitioner points out that his right to due process was violated, the Justices of the Sandiganbayan having actively participated in the criminal proceedings by "tak[ing] into their own hands in proving the case against [him]."[21]

---

[16] *Id.* at 14-15.

[17] *Id.* at 16-22.

[18] G.R. No. 81563, December 19, 1989, 180 SCRA 390.

[19] *Rollo*, pp. 26-27.

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

[21] *Id.* at 31.

The People, through the Special Prosecutor, draws attention to the failure of petitioner to present Valeria to shed light on her actual duties, or to at least present a certification from then Regional Director Manuel Hicao, who allegedly ordered Valeria to take over from petitioner the duty of collecting irrigation fees. To the People, petitioner's self-serving testimony failed to controvert the legal presumption of misappropriation.[22]

The People goes on to contend that petitioner may still be convicted of malversation by negligence even if the Information alleged the commission of intentional malversation since the "*dolo* or *culpa* present in the offense is only a modality in the perpetration of the felony."[23]

Respecting the supposed violation of petitioner's right to due process in light of the alleged "active" participation of the Sandiganbayan Justices in questioning him during the hearing of the case, the People underscores that it is the duty of a trial judge to examine a witness "to secure a full and clear understanding of the facts or to test to his satisfaction the credibility of the witness…"[24]

Article 217 of the Revised Penal Code provides:

Art. 217. *Malversation of public funds or property. Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

---

[22] *Id.* at 94-97.

[23] *Id.* at 103-104.

[24] *Id.* at 106-107.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public fund or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. (italics in the original, emphasis and underscoring supplied)

The elements of malversation of public funds are thus:

1. that the offender is a public officer;

2. that he had the custody or control of funds or property by reason of the duties of his office;

3. that those funds or property were public funds or property for which he was accountable; and

4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[25]

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[25] *Ocampo III v. People*, G.R. Nos. 156547-51, February 4, 2008, 543 SCRA 487.

All the above-mentioned elements are here present. Petitioner was a public officer[26] — he occupied the position of cashier at the NIA. By reason of his position, he was tasked to regularly handle irrigation fees, which are indubitably public funds pertaining to the NIA, and to remit them to the depositary bank.

As established by the prosecution, petitioner was the one who *remitted* irrigation fees collected from June 25, 1982 to October 31, 1983[27] inclusive, so that even if the Court were to credit petitioner's allegation that Valeria had actually taken over his function of *collecting* the irrigation fees, the collections were still, in fact by *his admission*, turned over to him.

> Q: How about the money after this payment for irrigation fees are entered in the Collection Book for which Ms. Edita Valeria is the one in charge, **who keeps the money being paid for irrigation fees**?
>
> A: She is the one holding the money turned over to her by the farmers who paid their irrigation fees, sir. I am just reporting in my office every 7th, 15th.
>
> PJ GARCHITORENA
>
> Confine your answer to the question. Who keeps the irrigation fees being collected?
>
> A: Edita Valeria, your Honor.
>
> PJ GARCHITORENA
>
> Q: Is that part of her functions?

---

[26] Art. 203 of the Revised Penal Code states that: *Who are public officers.* — For the purpose of applying the provisions of this and the preceding titles of this book, any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, *of any rank or class*, shall be deemed to be a public officer.

[27] TSN, November 22, 1988, pp. 3-5. See also Exhibit "A-2" or the Schedule of Validated Remittances of the Folder of Exhibits.

WITNESS

A: No, your Honor.

<u>Q:</u> **<u>Whose function is it to keep the irrigation fees?</u>**

<u>A:</u> **<u>My function, your Honor</u>**.

x x x x x x x x x.

Q: After Edita Valeria receives the money representing the irrigation fees of farmers, **<u>does she turn over the collections to you?</u>**

<u>A:</u> **<u>Yes, sir</u>**.[28] (Emphasis and underscoring supplied)

In fact, petitioner's admission that his signature was required before remitting the irrigation fees to the depositary bank reinforces the fact that he had complete *control* and *custody* thereof.

WITNESS

A: Everytime she reported to me, **she just fold [*sic*] the page of the collection book and he [*sic*] tells [*sic*] me, this is okay and <u>you can just sign this statement of collection</u>**.

PJ GARCHITORENA

Q: So **you are being <u>made to sign</u> a statement of collection <u>without looking at the supporting documents to validate the correctness of the figures nor even to determine whether the figures there and the ones remitted</u>** to the Philippine National Bank?

A: **<u>Yes, your Honor</u>**. I just asked her, "Is this accounting okay?" and she said "Yes."[29] (emphasis and underscoring supplied)

As to the element of misappropriation, indeed petitioner failed to rebut the *legal presumption* that he had misappropriated the fees to his personal use, his disclaimer being self-serving.

Why, indeed, Valeria, whom petitioner had pointed to as having full responsibility for the collections, including their deposit

---

[28] TSN, October 11, 1990, pp. 8-9.

[29] *Id.* at 11.

to the bank, *covered by the audit period*, was never presented to corroborate his claim dents his defense as does his failure to present the Regional Director or a certification from him for the same purpose.

As for petitioner's explanation that the unaccounted fees were extended as loans to employees as evidenced by "*vales*" and "chits" <u>found in his drawer</u> which involved a total of ₱79,044.51, it fails. If this claim were true, petitioner could have at least promptly collected them, and/or offered the testimonies of the employees-obligors to prove good faith on his part.

As for the "*vales*" and "chits" that <u>he offered in evidence</u>, as the same were admittedly incurred *before* the period of audit, they are immaterial, as correctly observed by the Sandiganbayan:

PROS GALINDEZ

Q: Mr. Witness, since these chits and *vales* were incurred <u>**before**</u> the period [covered by the] audit, <u>**you could not have possibly used the money collected**</u> **by you in your capacity as Cashier** <u>**for the period from June 25, 1982 to November 8, 1982**</u>.

A: <u>**Yes, sir**</u>. I have told you before that Mrs. Valeria is the one handling my collections. I am just concentrating on my disbursements. I have two disbursement books and my collection book is handled by Mrs. Valeria including the payments and …

x x x x x x x x x.

Q: So that these chits and *vales* which were merely listed by the Auditing Examiners as they were found inside your safe are irrelevant to the accusation?

WITNESS

A: Where can Mrs. Valeria get the cash to extend vales, sir? Because my collection book is balance as found by the examiners. So, she herself extended vales from her collections.

Q: Mr. Witness, we are speaking about the chits and *vales* which you extended.

PJ GARCHITORENA

> It is clear that the accused is being charged for shortage covered by the period June 25, 1982 to November 8, 1982 and that Exhibit "1" series refers to accounts prior to that period of audit so that you have a point. You have covered that point already.

PROS GALINDEZ

Q: **This inventory of cash and cash items which is from 1975 to 1981, did you attempt to collect this from the payees**?

A: **No, sir**.[30] (emphasis and underscoring supplied)

Petitioner's assertion, *vis-à-vis* his citation of the ruling in *Arias*, that he was the superior of Valeria was later belied by him:

> Q: But she [referring to Valeria] is under your direct supervision?
>
> A: Under the Chief of Office, the Irrigation Superintendent.[31]

Aside then from the lack of a superior-subordinate relationship with Valeria, the circumstances obtaining in *Arias* and the present case are entirely different. *Arias* involved the culpability of a final approving authority on the basis of criminal *conspiracy,* whereas the present case involves petitioner's culpability on the basis of his being the *accountable* public officer.

On petitioner's assertion that the Sandiganbayan erred in concluding that he committed malversation through inexcusable negligence when the Information alleges intentional malversation, it does not impress.

To be sure, the Sandiganbayan convicted petitioner for *intentional* malversation on the basis of his failure to refute the presumption that he converted the money to his personal use.

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

[31] *Id.* at 34.

Petitioner misreads the assailed Decision since the discussion about his culpability for malversation through inexcusable negligence was merely academic in light of the postulation that a subordinate (Valeria) was at fault.[32]

Nonetheless, in *Cabello v. Sandiganbayan*,[33] the Court ratiocinated that:

> On the other hand, petitioner contends that the bulk of said amount represented "*vales*" he granted to the postal employees and the minor portion consisted of unremitted, unreimbursed or uncollected amounts. **His very own explanation, therefore, shows that the embezzlement, as claimed by the prosecution, or the expenditures, as posited by him, were not only unauthorized but intentionally and voluntarily made**. Under no stretch of legal hermeneutics can it be contended that these funds were lost through abandonment or negligence without petitioner's knowledge as to put the loss within a merely culpable category. **From the contention of either party, the misappropriation was intentional and not through negligence.**
>
> Besides, even on the putative assumption that the evidence against petitioner yielded a case of malversation by negligence but the information was for intentional malversation, under the circumstances of this case his conviction under the first mode of misappropriation would still be in order. Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. **Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper.** A possible exception would be when the mode of commission alleged in the particulars of the indictment is so far removed from the ultimate categorization of the crime that it may be said due process was denied by deluding the accused into an erroneous comprehension of the charge against him. That no such prejudice was occasioned on petitioner

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[32] The Sandiganbayan Decision states: x x x Assuming *arguendo* that his assistant was the one at fault, the glaring truth is that the custody of the same remains his ultimate responsibility and accountability. His purported trust and confidence in Valeria only serves to establish his inexcusable negligence. x x x

[33] G.R. No. 93885, May 14, 1991, 197 SCRA 94.

nor was he beleaguered in his defense is apparent from the records of this case.[34] (italics in the original, emphasis and underscoring supplied)

Finally, petitioner's claim of violation of his right to due process *vis-à-vis* the Sandiganbayan Justices' active "participation" during the trial fails too. For he has not specified any instance of supposed bias of the Justices, or cited what questions adversely affected him. The record does not reflect any question or objection raised by petitioner's counsel during the trial to the Justices' questions or the tenor or manner they were propounded. Nor does the record reflect any move to inhibit the Justices if petitioner perceived that they were biased against him.

That a magistrate may propound clarificatory questions to secure a full and clear understanding of the facts in the case is not proscribed.[35]

WHEREFORE, the petition is *DENIED*. The December 7, 2000 Decision and June 10, 2002 Resolution of the Sandiganbayan in Criminal Case No. 12015 are *AFFIRMED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[34] *Id.* at 103.

[35] *People v. Hatton*, G.R. No. 85043, June 16, 1984, 210 SCRA 1.

FIRST DIVISION

[G.R. No. 174861. April 11, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REYNALDO OLESCO *Y* ANDAYANG,**[1] *appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; USE OF FORCE; ACT OF PULLING THE VICTIM AND COVERING HER FACE WITH DRUG-LACED HANDKERCHIEF IS SYNONYMOUS WITH FORCE. —** The CA correctly disregarded appellant's claim that he did not use force nor resort to intimidation in the commission of the crime. We agree with the CA that appellant's act of pulling "AAA" and covering her face with drug-laced handkerchief is synonymous with force. x x x Indeed, "[f]ailure to offer tenacious resistance does not make the submission by the complainant to the criminal acts of the accused voluntary. What is necessary is that the force employed against her be sufficient to consummate the purpose which he has in mind."

2. **REMEDIAL LAW; APPEALS; FINDINGS OF THE TRIAL COURT, RESPECTED. —** We find no reason to depart from the findings of the trial court, which were affirmed by the CA. "As a rule, x x x findings [of the trial court] deserve weight and respect. The same is true as regards the evaluation of the credibility of witnesses, because it is the trial judge who hears them and observes their demeanor while testifying. It is only when the trial court has overlooked or misapprehended some facts or circumstances of weight and influence that these matters are re-opened for independent examination and review by appellate courts." "The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it."

3. **CRIMINAL LAW; RAPE; SWEETHEART THEORY; MUST BE SUFFICIENTLY ESTABLISHED BY COMPELLING EVIDENCE. —** "The 'sweetheart theory' or 'sweetheart defense'

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[1] Also spelled as Ondayang in some parts of the records.

is an oft-abused justification that rashly derides the intelligence of this Court and sorely tests our patience. For the Court to even consider giving credence to such defense, it must be proven by compelling evidence. The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required — such as tokens, mementos, and photographs. There is none presented here by the defense." x x x "In any event, the claim is inconsequential since it is well-settled that being sweethearts does not negate the commission of rape because such fact does not give appellant license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act." Thus, having failed to satisfactorily establish that "AAA" voluntarily consented to engage in sexual intercourse with him, the said act constitutes rape on the part of the appellant.

4. **ID.; ID.; PROPER CIVIL PENALTIES. —** As regards the award of damages, the trial court, as affirmed by the CA, correctly awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. "However, in line with current jurisprudence, an additional award of ₱30,000.00 as exemplary damages should likewise be given, as well as interest of six percent (6%) per annum on all damages awarded from the finality of judgment until fully paid."

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

"In rape, the 'sweetheart' defense must be proven by compelling evidence: *first,* that the accused and the victim were lovers; and, *second,* that she consented to the alleged sexual relations. The second is as important as the first, because this Court has held often enough that love is not a license for lust."[2]

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[2] *People v. Bautista*, G.R. No. 140278, June 3, 2004, 430 SCRA 469, 471.

On appeal is the May 30, 2006 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00701 which affirmed in its entirety the September 23, 2003 Decision[4] of the Regional Trial Court of Parañaque City, Branch 258 finding appellant Reynaldo Olesco guilty beyond reasonable doubt of the crime of rape.

Factual Antecedents

On November 5, 2001, an Information[5] was filed charging appellant with rape committed as follows:

> That on or about the 17th day of October 2001, in "BBB",[6] "CCC", and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with the complainant "AAA", 18 years old, against her will and consent.
>
> CONTRARY TO LAW.

During his arraignment, appellant entered a plea of "not guilty."[7] Thereafter, trial ensued.

The facts of the case as narrated in the Decision of the appellate court are as follows:

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[3] CA *rollo*, pp. 107-116; penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo.

[4] Records, pp. 132-138; penned by Judge Raul E. De Leon.

[5] *Id*. at 1.

[6] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children, effective November 5, 2004.

[7] Records, p. 18.

The evidence for the prosecution shows that on October 17, 2001, at around 10:00 o'clock in the evening, "AAA," accompanied x x x her cousin in going out of "DDD" in "BBB." On her way back home, "AAA" passed by a bakery where Olesco was working. Thereafter, somebody pulled her and covered her mouth with a hanky which caused her to be unconscious. When she regained consciousness at around 11:00 o'clock p.m., "AAA" found herself naked beside Olesco inside a room located near the bakery. Her whole body ached, especially her cheeks, tummy and her private part. "AAA" then slapped the accused three times and asked him why he raped her. Olesco answered that he would kill her should she report the incident to the police. After a while, accused told her to go home. She dressed up immediately and went home running.

When she arrived home, "AAA" told her cousin "EEE" about what happened. After two (2) days, "AAA" reported the incident to the *barangay*. The *barangay* officials asked her the whereabouts of the accused which she did not know then as she saw the accused [only] once and knows him only by face since at that time, she was just a week old in "DDD."

"AAA" explained that she was able to report the incident to the *barangay* officials two days after it happened since when she woke up in the morning of October 18, 200[1], it was already 9:00 o'clock a.m. and she could not stand as her whole body ached.

Thereafter, the *barangay* officials referred the matter to the police. An investigation was subsequently conducted. Thereafter, "AAA" was referred to the Philippine National Police Crime Division, Camp Crame, Quezon City, for medico-legal examination.

On October 20, 2001, Dr. Jericho Angelito Q. Cordero, a Medico-Legal Officer based at the Philippine National Police Crime Laboratory, Camp Crame, Quezon City, conducted a physical and genital examination on "AAA." x x x

x x x x x x x x x

According to Dr. Cordero, at the time of the examination, "AAA" was in a non-virgin state physically which means that she had a previous intercourse x x x about ten days or maybe a year ago. "AAA" had also a lacerated wound with a healing period of about ten (10) to fifteen (15) days caused by a hard, blunt instrument inserted into her vagina like a finger or an erect penis which would fit and succumb to elasticity or x x x a stick. He also testified that the laceration

of the victim was consistent with the time of the alleged commission of the crime. He likewise testified that "AAA" told him that she only discovered the wounds when she woke up [naked] at about 10:00 o'clock in the evening of October 17, 200[1] with Olesco beside her x x x. Aside from his Initial Medico-Legal Report, he likewise made his Final Report No. M-2674-01 (Exhibit "E") whereby he concluded that there are no external signs of any form of trauma on the external genital area which has a deep healed laceration consistent with sexual intercourse.

Olesco denied having raped "AAA" and put up the "sweetheart defense." He testified that he worked as a baker for five (5) months in a bakery inside "FFF," "BBB," owned by Rafael Arimado. Prior to the alleged rape incident, "AAA" used to buy bread in the bakery. He came to know her when "AAA" introduced herself x x x. After three months, he and "AAA" became sweethearts. According to Olesco, there is no truth to the complaint filed against him by "AAA." He alleged that it was "AAA" who went to him at the bakery at around 7:00 o'clock in the evening of October 17, 2001. "AAA" wanted him to go with her [to her] province in Leyte, to which he agreed. The room referred to by "AAA" is for the female workers near the bakery where they talked in the presence of their employer. Che-Che and Alex, his co-workers, Jerry and Annalyn Arimando were also inside the room when they entered but they went out. He further testified that during his second month stay in the bakery, he got attracted to "AAA" whom he used to see every afternoon and they talked even for just a minute until he proposed his love to her x x x. When they became steady, there were occasions that they kissed each other, held hands and x x x even made love in a room beside the bakery prior to October 17, 2001 at around 9:00 o'clock in the evening and thereafter, "AAA" left at 10:00 o'clock. However, on October 18, 2001, "AAA" had him arrested by the *barangay tanods* [who] brought [him] to the Coastal Police Headquarters.[8]

Ruling of the Regional Trial Court

On September 23, 2003, the RTC rendered its Decision disposing as follows:

In fine, the Court finds accused, REYNALDO OLESCO *Y* ONDAYANG liable for SIMPLE RAPE under Article 266-A, par. 1

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[8] CA *rollo*, pp. 108-111.

3(b) in relation to Art. 266-B of the Revised Penal Code as amended by R.A. 8353 and the penalty to be meted the accused should be *RECLUSION PERPETUA* in the absence of any aggravating or qualifying circumstance which is from twenty (20) years and one (1) day to forty (40) years of imprisonment.

Moreover, accused has to indemnify the private complainant the amount of ₱50,000.00 as civil indemnity as well as the amount of ₱50,000.00 as moral damages. This is because "under the present case law, an award of ₱50,000.00 as civil indemnity is mandatory upon finding of the fact of rape. This is exclusive of the award of moral damages of ₱50,000.00 without need of further proof as it is now recognized as inherently concomitant with and necessarily proceeds from the appalling crime of rape which per se warrants an award for moral damages. (*People v. Caratay*, 316 SCRA 251).

WHEREFORE, the prosecution having been able to prove the guilt of accused, REYNALDO OLESCO *y* ONDAYANG beyond reasonable doubt of the crime of SIMPLE RAPE defined and punished under Art. 266-A, par. 1[,] 3(b) in relation to Art. 266-B of the Revised Penal Code as amended by R.A. 8353[,] accused REYNALDO OLESCO *y* ONDAYANG is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*.

Pursuant to existing jurisprudence, accused REYNALDO OLESCO *y* ONDAYANG, is ordered to indemnify "AAA," the private complainant, the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

No pronouncement as to cost.

SO ORDERED.[9]

In finding appellant guilty beyond reasonable doubt of the crime of rape, the RTC noted that "AAA" positively identified appellant as the malefactor;[10] that appellant failed to rebut the testimony of the victim[11] or impute ill-motive on her part;[12] and that "AAA's" testimony was brief, clear, and straightforward[13]

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[9] Records, pp. 137-138.

[10] *Id*. at 135.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 136.

and supported by the medical findings.[14] Moreover, the RTC observed that appellant's "sweetheart defense" lacked sufficient and convincing proof;[15] neither was it substantiated by any documentary and/or other evidence like mementos, love letters, notes, pictures and the like. Worse, appellant did not present his employer or any of his co-workers to corroborate his claim that he and "AAA" were sweethearts and that "AAA" used to frequent his place.[16] The RTC also held that assuming "AAA" and appellant were sweethearts, it does not serve as license or justification to commit rape.[17]

On September 30, 2003, appellant filed his Notice of Appeal[18] which was given due course by the trial court.[19]

Ruling of the Court of Appeals

On appeal, the appellate court affirmed the trial court's Decision *in toto*, *viz*:

> WHEREFORE, the assailed September 23, 2003 Decision of the Regional Trial Court of Parañaque City, Branch 258, in Criminal Case No. 01-01193, is hereby AFFIRMED in its entirety.
>
> SO ORDERED.[20]

Hence, this appeal.

The Parties' Arguments

Appellee maintains that appellant's guilt was proven beyond reasonable doubt.

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[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 159.

[19] *Id*. at 160.

[20] CA *rollo,* p. 116.

On the other hand, appellant claims that he was denied his right to due process considering that as alleged in the Information, the rape was committed through the use of force and intimidation. However, what was established by the prosecution is the fact that "AAA" was unconscious when she was raped. Appellant also insists that there was nothing in "AAA's" testimony that would indicate that appellant had sexual intercourse with her. Appellant likewise insists that no sufficient evidence was presented to prove his culpability. He argues that "AAA's" testimony is ambiguous and full of discrepancies. He opines that "AAA's" claim that she lost consciousness when her mouth was covered with a drug-laced handkerchief was unbelievable and ridiculous. Moreover, appellant alleges that "AAA's" testimony in open court contradicts her narration in her *Sinumpaang Salaysay.*

Our Ruling

The appeal lacks merit.

The CA correctly disregarded appellant's claim that he did not use force nor resort to intimidation in the commission of the crime. We agree with the CA that appellant's act of pulling "AAA" and covering her face with drug-laced handkerchief is synonymous with force, to wit:

> It has been duly established that when "AAA" passed by the bakery, Olesco immediately pulled her and covered her mouth with a handkerchief. She smelled something like a "snow bear" and lost consciousness. Thereafter, Olesco raped her.
>
> In other words, "AAA" became unconscious after accused employed force on her; that is, pulling her and covering her mouth with a "snow bear" smelling hanky. The act of pulling her and covering her face with a drug-laced hanky is the immediate cause why "AAA" fell unconscious which facilitated accused's bestial desire against "AAA." There is, therefore, no truth to the claim of Olesco that no force was employed upon "AAA" to satisfy his bestial desire. It is a well-established doctrine that for the crime of rape to exist, it is not necessary that the force employed accomplishing it be so great or of such character as could not be resisted; it is only necessary that the force employed by the guilty party be sufficient to

consummate the purpose which he had in view x x x. Thus, the use of force and intimidation as alleged in the information has been sufficiently established.[21]

Indeed, "[f]ailure to offer tenacious resistance does not make the submission by the complainant to the criminal acts of the accused voluntary. What is necessary is that the force employed against her be sufficient to consummate the purpose which he has in mind."[22]

Appellant's contentions that "AAA's" testimony is ambiguous and full of discrepancies and that her claim that she lost consciousness when her mouth was covered with a drug-laced handkerchief is unbelievable and ridiculous deserve scant consideration. To be sure, these contentions pertain to the assessment of witness's credibility which is properly within the province of the trial court. In this case, the trial court held that:

> Based on the foregoing, the Court in its careful analysis of the testimonies of the prosecution witnesses as compared to that of the defense, found that those of the former carry greater weight and credence for being straightforward, reasonable, clear and categorical which is entirely different from the allegations of the defense. To the Court, the rape was consummated under paragraph 1, 3(b) of Article 266-A of the Revised Penal Code.[23]

We find no reason to depart from said findings of the trial court, which were affirmed by the CA. "As a rule, x x x findings [of the trial court] deserve weight and respect. The same is true as regards the evaluation of the credibility of witnesses, because it is the trial judge who hears them and observes their demeanor while testifying. It is only when the trial court has overlooked or misapprehended some facts or circumstances of weight and influence that these matters are re-opened for independent examination and review by appellate courts."[24] "The

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[21] *Id*. at 112.

[22] *People v. Bautista*, *supra* note 2 at 488.

[23] Records, p. 144.

[24] *People v. Bautista*, *supra* note 2 at 478-479.

age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it."[25]

Both the trial court and the CA properly disregarded appellant's claim that he and "AAA" were sweethearts. "The 'sweetheart theory' or 'sweetheart defense' is an oft-abused justification that rashly derides the intelligence of this Court and sorely tests our patience. For the Court to even consider giving credence to such defense, it must be proven by compelling evidence. The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required — such as tokens, mementos, and photographs. There is none presented here by the defense."[26] Thus:

> Q So, you said you came to know this "AAA" since she used to buy bread at the bakery and you testified that you became steady. Can you remember what particular month or date you became steady with "AAA"?
>
> A I cannot remember that anymore, ma'am.
>
> x x x x x x x x x
>
> Q And do you have any remembrance or anything that will prove that this "AAA" has been your steady or girlfriend?
>
> A None, ma'am.
>
> Q And how long did you become steady with this "AAA" before October 17?
>
> A Three (3) months, ma'am.[27]

"In any event, the claim is inconsequential since it is well-settled that being sweethearts does not negate the commission

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[25] *People v. Magbanua*, G.R. No. 176265, April 30, 2008, 553 SCRA 698, 704.

[26] *People v. Baldo,* G.R. No. 175238, February 24, 2009, 580 SCRA 225, 232.

[27] TSN, January 30, 2003, p. 12.

of rape because such fact does not give appellant license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act."[28] Thus, having failed to satisfactorily establish that "AAA" voluntarily consented to engage in sexual intercourse with him, the said act constitutes rape on the part of the appellant.

Finally, we note that "AAA" lost no time in reporting the incident to her cousin who in turn immediately relayed the same to the *barangay* officials which resulted in the arrest of the appellant. On the other hand, appellant failed to rebut "AAA's" testimony that prior to the incident she saw appellant only once considering that "AAA" was new to the place, having stayed thereat for only a week before the rape. Even appellant could not ascribe any ill will on the part of "AAA."[29] More significantly, appellant did not present his employer or any of his co-workers who could supposedly corroborate his claim that he only talked with "AAA" on the night of October 17, 2001.

As regards the award of damages, the trial court, as affirmed by the CA, correctly awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. "However, in line with current jurisprudence, an additional award of ₱30,000.00 as exemplary

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[28] *People v. Magbanua, supra* note 25.

[29] Q Now, you said that on October 17, 2001, you only went with "AAA" to a room and talked for about five (5) minutes and now the following day she is filing a case of rape against you. Do you know of any reason for her filing a case of rape when you said that nothing happened that night?

A I do not understand why she filed a complaint of rape against me, sir.

x x x x x x x x x

Q So, you are saying now, Mr. Witness, that there is no reason for "AAA" to have filed this rape case because nothing happened. You did not quarrel or there was never a confrontation between you [on the night of] October 17, 2001, am I correct?

A I do not know the reason why, ma'am. (TSN, January 30, 2003, pp. 11 and 15.)

damages should likewise be given, as well as interest of six percent (6%) per annum on all damages awarded from the finality of judgment until fully paid."[30]

WHEREFORE, the appeal is *DENIED*. The May 30, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00701 which affirmed the September 23, 2003 Decision of the Regional Trial Court of Parañaque City, Branch 258 finding appellant Reynaldo Olesco guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages to "AAA" is *AFFIRMED* with *MODIFICATIONS* that an additional award of ₱30,000.00 as exemplary damages should likewise be given, with interest at the rate of six percent (6%) per annum on all the damages awarded in this case from the finality of this judgment until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178635. April 11, 2011]

SERVILLANO E. ABAD, *petitioner, vs.* **OSCAR C. FARRALES and DAISY C. FARRALES-VILLAMAYOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; METROPOLITAN TRIAL COURT; ACTION FOR FORCIBLE ENTRY MUST

[30] *People v. Alverio*, G.R. No. 194259, March 16, 2011.

ALLEGE PRIOR PHYSICAL POSSESSION OF PROPERTY AND THE DEPRIVATION THEREOF. — Two allegations are indispensable in actions for forcible entry to enable first level courts to acquire jurisdiction over them: first, that the plaintiff had prior physical possession of the property; and, second, that the defendant deprived him of such possession by means of force, intimidation, threats, strategy, or stealth. There is no question that Abad made an allegation in his complaint that Oscar and Daisy forcibly entered the subject property. The only issue is with respect to his allegation, citing such property as one "*of which they have complete physical and material possession of the same until deprived thereof*." Abad argues that this substantially alleges plaintiff's *prior physical possession* of the property before the dispossession, sufficient to confer on the MeTC jurisdiction over the action. The Court agrees. The plaintiff in a forcible entry suit is not required to use in his allegations the exact terminology employed by the rules. It is enough that the facts set up in the complaint show that dispossession took place under the required conditions.

2. **ID.; ID.; ID.; ID.; PRIOR *PHYSICAL* POSSESSION MUST BE ESTABLISHED, NOT THE RIGHT TO POSSESSION; FAILURE TO PROVE THE SAME WARRANTS DISMISSAL OF THE COMPLAINT. —** It is of course not enough that the allegations of the complaint make out a case for forcible entry. The plaintiff must also be able to prove his allegations. He has to prove that he had prior physical possession for this gives him the security that entitles him to remain in the property until a person with a better right lawfully ejects him. x x x Abad argued that with the title to the property in his name, he has in his favor the right to the actual, physical, exclusive, continuous, and peaceful possession of the same. He pointed out that his possession *de facto* began from the time of the signing and notarization of the deed of absolute sale, becoming *de jure* once the title was issued in his name. It is of course true that a property owner has the right to exercise the attributes of ownership, one of which is the right to possess the property. But Abad is missing the point. He is referring to possession flowing from ownership which is not in issue in this case. Possession in forcible entry cases means nothing more than physical possession or possession *de facto,* not legal possession

in the sense contemplated in civil law. Only prior physical possession, not title, is the issue. For these reasons, the Court finds that Servillano utterly failed to prove prior physical possession in his favor. The absence of prior physical possession by the plaintiff in a forcible entry warrants the dismissal of the complaint.

APPEARANCES OF COUNSEL

Servillano E. Abad for and in his behalf.
Isidoro F. Molina for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about a) the need, when establishing the jurisdiction of the court over an action for forcible entry, for plaintiff to allege in his complaint prior physical possession of the property and b) the need for plaintiff to prove as well the fact of such prior physical possession.

The Facts and the Case

Petitioner Servillano Abad claims that on August 6, 2002 he and his wife, Dr. Estrella E. Gavilan-Abad, bought a 428-square meter registered property on 7 Administration St., GSIS Village, Project 8, Quezon City,[1] from Teresita, Rommel, and Dennis Farrales. The latter were the wife and sons, respectively, of the late brother of respondents Oscar Farrales (Oscar) and Daisy Farrales-Villamayor (Daisy).[2] Teresita operated a boarding house on the property.[3]

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[1] Transfer Certificate of Title N-241669 over the property was issued in the name of the Abads by the Register of Deeds of Quezon City on September 19, 2002.

[2] *Rollo*, pp. 10-11.

[3] Records, pp. 249-250 (pagination in red ink); records, pp. 165 (pagination in red ink), 372.

Because the Abads did not consider running the boarding house themselves, they agreed to lease the property back to Teresita for ₱30,000.00 a month so she could continue with her business.[4] But, although the lease had a good start, Teresita suddenly abandoned the boarding house,[5] forcing the Abads to take over by engaging the services of Bencio Duran, Teresita's helper, to oversee the boarding house business.[6]

On December 7, 2002, Dr. Abad went to the boarding house to have certain damage to some toilets repaired. While she was attending to the matter, she also hired house painters to give the boarding house fresh coat of paint.[7] On December 8, 2002 Oscar and Daisy came, accompanied by two men, and forcibly took possession of the boarding house. Frightened, the painters called the Abads who immediately sought police help. The Abads were later appeased, however, when they learned that the intruders left the place.

Two days later or on December 10, 2002, the day the Abads left for abroad, Oscar and Daisy forcibly entered and took possession of the property once again. Because of this, on March 10, 2003 petitioner Servillano Abad (Abad) filed a complaint[8] for forcible entry against the two before the Metropolitan Trial Court (MeTC) of Quezon City.[9]

Oscar and Daisy vehemently denied that they forcibly seized the place. They claimed ownership of it by inheritance. They also claimed that they had been in possession of the same from the time of their birth.[10] That Oscar had been residing on the

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[4] *Id.* at 12-13, 165 (pagination in red ink), 255 (pagination in red ink).

[5] *Rollo*, p. 16, CA *rollo*, 275, records, p. 165 (pagination in red ink).

[6] *Id.*; *id.*

[7] *Id.*; records, p. 165.

[8] Records, pp. 1-6. The complaint was raffled to Branch 37 and docketed as Civil Case 30312.

[9] *Rollo*, pp. 12-13, 16-17; records, pp. 166-167 (pagination in red ink).

[10] CA *rollo*, pp. 156, 158; *id.* at 192, 196, 347, 438.

property since 1967 as attested to by a March 31, 2003 certification issued by *Barangay* Bahay Toro.[11]

While the defendants admitted that Daisy herself ceased to reside on the property as early as 1986, they pointed out that she did not effectively give up her possession. Oscar and Daisy further claimed that when their parents were still alive, the latter mortgaged the property to a bank to secure a loan. After their mother passed away, they decided to lease portions of the property to help pay the loan. Daisy managed the operation of the boarding house.[12] To bolster their claim, Oscar and Daisy presented copies of rental receipts[13] going back from 2001 to 2003. They would not have been able to lease the rooms unless they were in possession.[14]

Further, Oscar and Daisy asked the MeTC to dismiss the action on the ground of failure of Abad to show that he and his wife enjoyed prior physical possession of the property, an essential requisite in forcible entry cases. Abad's allegation that he and his wife immediately leased the property after they bought it was proof that they were never in possession of it for any length of time.[15]

On March 30, 2005 the MeTC rendered a decision[16] in favor of Abad, stating that Oscar and Daisy could not acquire ownership of the property since it was registered. And, as owner, Abad was entitled to possession.

Disagreeing with the MeTC, Oscar and Daisy went up to the Regional Trial Court (RTC) of Quezon City. In a decision[17]

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[11] *Id.* at 229.

[12] *Id.* at 79, 174.

[13] Records, pp. 220-240.

[14] CA *rollo*, p. 21; Records 437.

[15] *Id.* at 159, 174, 202-203.

[16] Records, pp. 275-277.

[17] CA *rollo*, pp. 48-50.

dated October 26, 2005, the RTC affirmed the decision of the MeTC in its totality. It held that Oscar and Daisy could no longer impugn the jurisdiction of the MeTC over the action since they raised the ground of Abad's failure to allege prior physical possession in his complaint for the first time on appeal. Besides, said the RTC, since the complaint alleged that Servillano owned the property, it may be presumed that he also had prior possession of it. No evidence to the contrary having been presented, the presumption stood.

Abad moved for immediate execution[18] and partial reconsideration[19] of the decision with respect to his claim for attorney's fees, exemplary damages, and reasonable rents. For their part, Oscar and Daisy sought reconsideration[20] of the RTC decision and moved to strike out Abad's motions.[21] On December 1, 2005 the RTC issued an Order,[22] granting Abad's motion for immediate execution that would place him in possession and ordering the immediate release to him of the ₱390,000.00 supersedeas bond that Oscar and Daisy posted in the case. Further, the RTC partially reconsidered its decision by awarding attorney's fees of ₱20,000.00 to Abad. Oscar and Daisy moved for the reconsideration of this order.[23] In an Order dated December 9, 2005, the RTC denied the motion for reconsideration filed by Oscar and Daisy of its October 26, 2005 Decision on the ground of non-compliance with Section 4, Rule 15 of the Rules of Court.

Undaunted, Oscar and Daisy filed a petition for review[24] with the Court of Appeals (CA). On March 8, 2007 the CA

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[18] Records, pp. 384-385.

[19] *Id.* at 395-396.

[20] CA *rollo*, pp. 51-63.

[21] *Id.* at 214-223.

[22] *Id.* at 64-67.

[23] *Id.* at 68-76.

[24] *Id.* at 9-46. Docketed as CA-G.R. SP 92617.

rendered a decision,[25] annulling the decisions and orders of both the MeTC and the RTC on the ground of lack of jurisdiction. The CA pointed out that Abad merely alleged in his complaint that he leased the property to Teresita after he and his wife bought the same and that, thereafter, Oscar and Daisy forcibly entered the same. Since Abad did not make the jurisdictional averment of prior physical possession, the MeTC did not acquire jurisdiction over his action. Further, Oscar and Daisy ably proved actual possession from 1967 through the *barangay* certification. Since the MeTC had no jurisdiction over the case, all the proceedings in the case were void.[26]

Abad moved for reconsideration but the CA denied the same,[27] hence, the present petition for review.[28]

Questions Presented

The case presents the following questions:

1. Whether or not Abad sufficiently *alleged* in his complaint the jurisdictional fact of prior physical possession of the disputed property to vest the MeTC with jurisdiction over his action; and

2. In the affirmative, whether or not Abad sufficiently *proved* that he enjoyed prior physical possession of the property in question.

The Court's Rulings

Two allegations are indispensable in actions for forcible entry to enable first level courts to acquire jurisdiction over them: first, that the plaintiff had prior physical possession of the property; and, second, that the defendant deprived him of such possession by means of force, intimidation, threats, strategy, or stealth.[29]

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[25] *Rollo*, pp. 47-60. Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Marina L. Buzon and Edgardo F. Sundiam, concurring.

[26] *Id.* at 56-58.

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

[28] *Id.* at 8-46.

[29] Section 1, Rule 70 of the RULES OF COURT; *Sales v. Barro*, G.R. No. 171678, December 10, 2008, 573 SCRA 456, 462-463; *Varona v. Court*

There is no question that Abad made an allegation in his complaint that Oscar and Daisy forcibly entered the subject property. The only issue is with respect to his allegation, citing such property as one "*of which they have complete physical and material possession of the same until deprived thereof*." Abad argues that this substantially alleges plaintiff's *prior physical possession* of the property before the dispossession, sufficient to confer on the MeTC jurisdiction over the action. The Court agrees. The plaintiff in a forcible entry suit is not required to use in his allegations the exact terminology employed by the rules. It is enough that the facts set up in the complaint show that dispossession took place under the required conditions.[30]

It is of course not enough that the allegations of the complaint make out a case for forcible entry. The plaintiff must also be able to prove his allegations. He has to prove that he had prior physical possession[31] for this gives him the security that entitles him to remain in the property until a person with a better right lawfully ejects him.[32]

Here, evidently, the Abads did not take physical possession of the property after buying the same since they immediately rented it to Teresita who had already been using the property as a boarding house. Abad claims that their renting it to Teresita was an act of ownership that amounted to their acquiring full physical possession of the same.[33]

But the Abad's lease agreement with Teresita began only in September 2002.[34] Oscar and Daisy, on the other hand, have proved that they had been renting spaces in the property as

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of Appeals, G.R. No. 124148, May 20, 2004, 428 SCRA 577, 583-584, citing *Spouses Tirona v. Alejo*, 419 Phil. 285, 299 (2001).

[30] *Cajayon v. Spouses Batuyong*, 517 Phil. 648, 659 (2006).

[31] *Domalsin v. Spouses Valenciano*, 515 Phil. 745, 763 (2006).

[32] *De Grano v. Lacaba*, G.R. No. 158877, June 16, 2009, 589 SCRA 148, 157.

[33] Records, pp. 41, 44-45, 62.

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

early as 2001 as evidenced by receipts that they issued to their lessees. This was long before they supposedly entered the property, using force, in 2002.

Of course, Abad pointed out that the cited receipts covered rents in a place called "D's Condominium" in Sampaloc, Manila, and were only made to appear through handwritten notations that they were issued for rooms in the property subject of the suit.[35] But a close examination of the receipts shows that "D's Condominium" was just the name that Daisy employed in her business of renting rooms. The receipts did not necessarily describe another place. Indeed, they provided blank spaces for describing as the subject of rent the property subject of this case. And, except for Abad's bare claim that Teresita and his sons had long been in possession before they sold it to him and his wife, he offered no evidence to show that this was in fact the case.

Abad assails as irregularly issued the *barangay* certification that Oscar had been residing on the subject property since 1967. He claims that it could have been issued as a mere favor to a friend, the *barangay* chairman having been Oscar's childhood playmate.[36] But Abad has no proof of these allegations. He has not overcome the presumption that the *barangay* chairman performed his official duty and acted regularly in issuing such certification.[37]

Finally, Abad argued that with the title to the property in his name, he has in his favor the right to the actual, physical, exclusive, continuous, and peaceful possession of the same. He pointed out that his possession *de facto* began from the time of the signing and notarization of the deed of absolute sale, becoming *de jure* once the title was issued in his name.[38]

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[35] *Rollo*, p. 39.

[36] *Id.* at 37.

[37] Please see: *San Miguel Village School v. Pundogar*, G.R. No. 80264, May 31, 1989, 173 SCRA 704, 710; *Autencio v. City Administrator Mañara*, 489 Phil. 752, 758 (2005).

[38] Records, pp. 174 (pagination in red ink), 368.

It is of course true that a property owner has the right to exercise the attributes of ownership, one of which is the right to possess the property. But Abad is missing the point. He is referring to possession flowing from ownership which is not in issue in this case. Possession in forcible entry cases means nothing more than physical possession or possession *de facto*, not legal possession in the sense contemplated in civil law. Only prior physical possession, not title, is the issue.[39]

For these reasons, the Court finds that Servillano utterly failed to prove prior physical possession in his favor. The absence of prior physical possession by the plaintiff in a forcible entry warrants the dismissal of the complaint.[40]

WHEREFORE, the Court *DENIES* the petition for review of petitioner Servillano E. Abad and *AFFIRMS* in their entirety the decision dated March 8, 2007 and resolution dated June 19, 2007 of the Court of Appeals in CA-G.R. SP 92617.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179010. April 11, 2011]

ELENITA M. DEWARA, represented by her Attorney-in-Fact, FERDINAND MAGALLANES, *petitioner, vs.* **SPOUSES RONNIE AND GINA LAMELA and STENILE ALVERO,** *respondents.*

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[39] *De Grano v. Lacaba*, *supra* note 32, at 159.

[40] *Lee v. Paz*, G.R. No. 183606, October 27, 2009.

SYLLABUS

1. **CIVIL LAW; PERSONS; MARRIAGE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP OF GAINS; PRESUMPTION THEREOF NOT DESTROYED BY REGISTRATION BY ONE SPOUSE ALONE OR THAT THE SPOUSES ARE SEPARATED-IN-FACT. —** 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. Registration in the name of the husband or the wife alone does not destroy this presumption. The separation-in-fact between the husband and the wife without judicial approval shall not affect the conjugal partnership. The lot retains its conjugal nature. Moreover, the presumption of conjugal ownership applies even when the manner in which the property was acquired does not appear. The use of the conjugal funds is not an essential requirement for the presumption to arise. There is no dispute that the subject property was acquired by spouses Elenita and Eduardo during their marriage. It is also undisputed that their marital relations are governed by the conjugal partnership of gains, since they were married before the enactment of the Family Code and they did not execute any prenuptial agreement as to their property relations. Thus, the legal presumption of the conjugal nature of the property applies to the lot in question. The presumption that the property is conjugal property may be rebutted only by strong, clear, categorical, and convincing evidence—there must be strict proof of the exclusive ownership of one of the spouses, and the burden of proof rests upon the party asserting it.

2. **ID.; SPECIAL CONTRACTS; SALE; NOT AFFECTED BY MERE INADEQUACY OF THE PRICE.—** [G]ross inadequacy of the price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. The records are bereft of proof that the consent of petitioner's father and her aunt were vitiated or that, in reality, they intended the sale to be a donation or some other contract. Inadequacy of the price *per se* will not rule out the transaction as one of sale; the price must be grossly inadequate or shocking to the conscience, such that the mind would revolt at it and such that a reasonable man would neither directly nor indirectly consent to it.

3. ID.; PERSONS; MARRIAGE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP OF GAINS; CONJUGAL PROPERTY MAY NOT AUTOMATICALLY BE LEVIED UPON IN AN EXECUTION TO ANSWER FOR THE OBLIGATION OF ONE OF THE SPOUSES. — [E]ven after having declared that Lot No. 234-C is the conjugal property of spouses Elenita and Eduardo, it does not necessarily follow that it may automatically be levied upon in an execution to answer for debts, obligations, fines, or indemnities of one of the spouses. Before debts and obligations may be charged against the conjugal partnership it must be shown that the same were contracted for, or the debts and obligations should have redounded to, the benefit of the conjugal partnership. Fines and pecuniary indemnities imposed upon the husband or the wife, as a rule, may not be charged to the partnership. However, if the spouse who is bound should have no exclusive property or if the property should be insufficient, the fines and indemnities may be enforced upon the partnership assets only after the responsibilities enumerated in Article 161 of the Civil Code have been covered.

4. ID.; ID.; ID.; ID.; ID.; MAY BE LIABLE FOR PAYMENT OF INDEMNITY IMPOSED UPON ONE SPOUSE AFTER THE RESPONSIBILITIES ENUMERATED UNDER ART. 161 OF THE CIVIL CODE HAVE BEEN COVERED. — The payment of indemnity adjudged by the RTC of Bacolod City in Criminal Case No. 7155 in favor of Ronnie may be enforced against the partnership assets of spouses Elenita and Eduardo after the responsibilities enumerated under Article 161 of the Civil Code have been covered. This remedy is provided for under Article 163 of the Civil Code, *viz.:* Art. 163. The payment of debts contracted by the husband or the wife before the marriage shall not be charged to the conjugal partnership. **Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership. However**, the payment of debts contracted by the husband or the wife before the marriage, and that of **<u>fines and indemnities imposed upon them, may be enforced against the partnership assets after the responsibilities enumerated in Article 161 have been covered</u>**, **if the spouse who is bound should have no exclusive property or if it should be insufficient**; but at the

time of the liquidation of the partnership such spouse shall be charged for what has been paid for the purposes above-mentioned. Article 161 of the Civil Code enumerates the obligations which the conjugal partnership may be held answerable, *viz.*: x x x Finally, the indemnity imposed against Eduardo shall earn an interest at the rate of twelve percent per annum, in accordance with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals.*

APPEARANCES OF COUNSEL

Omar Francis P. Monteverde for petitioner.
Solomon A. Lobrido, Jr. and *Jan Anthony G. Saril* for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated November 6, 2006 and the Resolution[2] dated July 10, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 64936, which reversed and set aside the Decision[3] dated September 2, 1999 of the Regional Trial Court (RTC), Branch 54, Bacolod City, in Civil Case No. 93-7942.

The Facts

Eduardo Dewara (Eduardo) and petitioner Elenita Magallanes Dewara (Elenita) were married before the enactment of the Family Code. Thus, the Civil Code governed their marital relations. Husband and wife were separated-in-fact because Elenita went to work in California, United States of America, while Eduardo stayed in Bacolod City.

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[1] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla, concurring; *rollo*, pp. 27-35.

[2] *Id.* at 37-38.

[3] Penned by Judge Demosthenes L. Magallanes; CA *rollo*, pp. 15-20.

On January 20, 1985, Eduardo, while driving a private jeep registered in the name of Elenita,[4] hit respondent Ronnie Lamela (Ronnie). Ronnie filed a criminal case for serious physical injuries through reckless imprudence[5] against Eduardo before the Municipal Trial Court in Cities (MTCC), Branch IV, Bacolod City. The MTCC found Eduardo guilty of the charge and sentenced him to suffer the penalty of imprisonment of two (2) months and one (1) day to (3) months, and to pay civil indemnity of Sixty-Two Thousand Five Hundred Ninety-Eight Pesos and Seventy Centavos (₱62,598.70) as actual damages and Ten Thousand Pesos (₱10,000.00) as moral damages. On appeal, the RTC[6] affirmed the decision of the MTCC[7] and it became final and executory.[8]

The writ of execution on the civil liability was served on Eduardo, but it was returned unsatisfied because he had no property in his name. Ronnie requested the City Sheriff, respondent Stenile Alvero, to levy on Lot No. 234-C, Psd. 26667 of the Bacolod Cadastre, with an area of One Thousand Four Hundred Forty (1,440) square meters (sq m), under Transfer Certificate of Title (TCT) No. T-80054, in the name of "ELENITA M. DEWARA, of legal age, Filipino, married to Eduardo Dewara, and resident of Bacolod City," to satisfy the judgment on the civil liability of Eduardo. The City Sheriff served a notice of embargo on the title of the lot and subsequently sold the lot in a public auction. In the execution sale, there were no interested buyers other than Ronnie. The City Sheriff issued a certificate of sale to spouses Ronnie and Gina Lamela to satisfy the civil liability in the decision against Eduardo.[9]

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[4] RTC records, p. 254.

[5] The case was entitled "*People of the Philippines v. Eduardo Dewara,*" which was docketed as Criminal Case No. 43719 in the MTCC and Criminal Case No. 7155 in the RTC.

[6] RTC decision in Criminal Case No. 7155; RTC records, pp. 178-180.

[7] MTCC decision in Criminal Case No. 43719; *id.* at 254-262.

[8] *Supra* note 1, at 28.

[9] *Id.* at 28-29.

Ronnie then caused the consolidation of title in a Cadastral Proceeding before the RTC, which ordered the cancellation of TCT No. T-80054 in the name of Elenita and the issuance of a new certificate of title in the name of respondent spouses.[10]

The levy on execution, public auction, issuance of certificate of sale, and cancellation of title of the lot in the name of Elenita were done while Elenita was working in California.[11] Thus, Elenita, represented by her attorney-in-fact, Ferdinand Magallanes, filed a case for annulment of sale and for damages against respondent spouses and *ex-officio* sheriff Stenile Alvero before the RTC of Bacolod City. Petitioner claimed that the levy on execution of Lot No. 234-C was illegal because the said property was her paraphernal or exclusive property and could not be made to answer for the personal liability of her husband. Furthermore, as the registered owner of the property, she received no notice of the execution sale. She sought the annulment of the sale and the annulment of the issuance of the new TCT in the name of respondent spouses.[12]

On the other hand, respondent spouses averred that the subject lot was the conjugal property of petitioner Elenita and Eduardo. They asserted that the property was acquired by Elenita during her marriage to Eduardo; that the property was acquired with the money of Eduardo because, at the time of the acquisition of the property, Elenita was a plain housewife; that the jeep involved in the accident was registered in the name of petitioner; and that Elenita did not interpose any objection pending the levy on execution of the property.[13]

On September 2, 1999, the RTC rendered a decision in favor of petitioner, the *fallo* of which reads:

WHEREFORE, judgment is hereby rendered in favor of the [petitioner] and against the [respondents]:

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[10] *Id.* at 29.

[11] *Id.*

[12] CA *rollo*, p. 15.

[13] *Id.* at 16.

1. The levy on execution on Lot No. 234-C of the Bacolod Cadastre covered by TCT No. 80054 in the name of [petitioner] Elenita M. Dewara, the public auction of the property, and the consolidation of the title and issuance of new TCT No. 167403 in the name of [respondent] Ronnie Lamela, are hereby declared null and void;
2. The Register of Deeds of Bacolod City is ordered to cancel TCT No. 167403 in the name of [respondent] Ronnie Lamela and TCT No. 80054 be reinstated or a new one issued in the name of [petitioner] Elenita M. Dewara;
3. There is no pronouncement on damages with cost *de officio*.

SO ORDERED.[14]

The RTC declared that said property was paraphernal in nature. It arrived at this conclusion by tracing how Elenita acquired the subject property. Based on the documentary evidence submitted, Elenita's grandfather, Exequiel Magallanes, originally owned Lot No. 234-C. Upon his demise, his children, Jesus (Elenita's father), Salud, and Concepcion, inherited the property, each entitled to a share equal to one-third (1/3) of the total area of the land. They were issued a new title (TCT No. T-17541) for the property. On July 6, 1966, petitioner's aunt, Salud, executed a waiver of rights duly registered with the Office of the Register of Deeds under Entry No. 76392, thereby waiving her rights and participation over her 1/3 share of the property in favor of her siblings, Jesus and Concepcion. The two siblings then became the owners of the property, each owning one-half (1/2) of the property. Jesus subsequently sold his share to his daughter, Elenita, for the sum of Five Thousand Pesos (₱5,000.00), based on the deed of sale dated March 26, 1975. The deed of sale was duly registered with the Register of Deeds under Entry No. 76393. Concepcion also sold her share to her niece, Elenita, for the sum of Ten Thousand Pesos (₱10,000.00), based on the deed of sale dated April 29, 1975, which was duly registered with the Register of Deeds under Entry No. 76394. By virtue

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[14] *Id.* at 20.

of the sale transactions, TCT No. T-17541 was cancelled and a new title, TCT No. T-80054, was issued in the name of Elenita.[15]

The RTC gave credence to the testimony of Elenita on the circumstances surrounding the sale of the property. First, it was sold to her by her father and her aunt so that the family would remain on the lot. Second, the minimal and inadequate consideration for the 1,440 sq m property was for the purpose of helping her expand her capital in her business at the time. Thus, the sale was essentially a donation and was therefore gratuitous in character.[16]

Having declared that the property was the paraphernal property of Elenita, the RTC ruled that the civil liability of Eduardo, which was personal to him, could not be charged to the exclusive property of his wife.[17]

On appeal, the CA reversed the decision of the RTC. The dispositive portion of the Decision reads:

> *WHEREFORE*, in view of all the foregoing, the instant appeal is ***GRANTED.*** The assailed decision of the Regional Trial Court of Bacolod City, Branch 54, dated September 2, 1999, in Civil Case No. 93-7942 is hereby ***REVERSED*** and ***SET ASIDE***, and a new Decision is ***entered DISMISSING*** the complaint for lack of merit. Let a copy of this Decision be furnished to the Office of the Register of Deeds of Bacolod City, Negros Occidental [which] is hereby ordered to ***cancel*** Transfer Certificate of Title No. T-80054 or any transfer certificate of title covering Lot No. 234-C issued in the name of Elenita M. Dewara, and ***reinstate*** Transfer Certificate of Title No. 167403 **or** ***issue*** a new transfer certificate of title covering Lot No. 234-C in the name of Ronnie Lamela. No pronouncement as to costs.
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> *SO ORDERED*.[18]

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[15] *Rollo*, pp. 30-31; *id.* at 17.

[16] CA *rollo*, p. 18.

[17] *Id.*

[18] *Rollo*, pp. 34-35.

In reversing the decision of the RTC, the CA elucidated that the gross inadequacy of the price alone does not affect a contract of sale, except that it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. Except for the assertions of Elenita, there was nothing in the records that would indicate a defect in Jesus and Concepcion Magallanes' consent to the sale.[19] The CA ruled that Elenita and Eduardo acquired the property by onerous title during their marriage through their common fund. Thus, it belonged to the conjugal partnership of gains and might be levied upon to answer for civil liabilities adjudged against Eduardo.[20]

Hence, this petition.

The Issue

The sole issue for resolution is whether the subject property is the paraphernal/exclusive property of Elenita or the conjugal property of spouses Elenita and Eduardo.

The answer to this question will define whether the property may be subject to levy and execution sale to answer for the civil liability adjudged against Eduardo in the criminal case for serious physical injuries, which judgment had already attained finality.

The Ruling of the Court

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.[21] Registration in the name of the husband or the wife alone does not destroy this presumption.[22] The separation-in-fact between the husband and the wife without

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[19] *Id.* at 32.

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

[21] CIVIL CODE, Art. 160; *Villanueva v. Chiong*, G.R. No. 159889, June 5, 2008, 554 SCRA 197, 203.

[22] *Bucoy v. Paulino, et al.*, 131 Phil. 790, 800 (1968).

judicial approval shall not affect the conjugal partnership. The lot retains its conjugal nature.[23] Moreover, the presumption of conjugal ownership applies even when the manner in which the property was acquired does not appear. The use of the conjugal funds is not an essential requirement for the presumption to arise.[24]

There is no dispute that the subject property was acquired by spouses Elenita and Eduardo during their marriage. It is also undisputed that their marital relations are governed by the conjugal partnership of gains, since they were married before the enactment of the Family Code and they did not execute any prenuptial agreement as to their property relations. Thus, the legal presumption of the conjugal nature of the property applies to the lot in question. The presumption that the property is conjugal property may be rebutted only by strong, clear, categorical, and convincing evidence—there must be strict proof of the exclusive ownership of one of the spouses, and the burden of proof rests upon the party asserting it.[25]

Aside from the assertions of Elenita that the sale of the property by her father and her aunt was in the nature of a donation because of the alleged gross disparity between the actual value of the property and the monetary consideration for the sale, there is no other evidence that would convince this Court of the paraphernal character of the property. Elenita proffered no evidence of the market value or assessed value of the subject property in 1975. Thus, we agree with the CA that Elenita has not sufficiently proven that the prices involved in the sales in question were so inadequate for the Court to reach a conclusion that the transfers were in the nature of a donation rather than a sale.

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[23] CIVIL CODE, Art. 178; *Villanueva v. Chiong*, *supra*, at 202.

[24] *Metropolitan Bank and Trust Co. v. Pascual*, G.R. No. 163744, February 29, 2008, 547 SCRA 246, 256-257.

[25] *Coja v. Court of Appeals*, G.R. No. 151153, December 10, 2007, 539 SCRA 517, 528.

Furthermore, gross inadequacy of the price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract.[26] The records are bereft of proof that the consent of petitioner's father and her aunt were vitiated or that, in reality, they intended the sale to be a donation or some other contract. Inadequacy of the price *per se* will not rule out the transaction as one of sale; the price must be grossly inadequate or shocking to the conscience, such that the mind would revolt at it and such that a reasonable man would neither directly nor indirectly consent to it.[27]

However, even after having declared that Lot No. 234-C is the conjugal property of spouses Elenita and Eduardo, it does not necessarily follow that it may automatically be levied upon in an execution to answer for debts, obligations, fines, or indemnities of one of the spouses. Before debts and obligations may be charged against the conjugal partnership, it must be shown that the same were contracted for, or the debts and obligations should have redounded to, the benefit of the conjugal partnership. Fines and pecuniary indemnities imposed upon the husband or the wife, as a rule, may not be charged to the partnership. However, if the spouse who is bound should have no exclusive property or if the property should be insufficient, the fines and indemnities may be enforced upon the partnership assets only after the responsibilities enumerated in Article 161 of the Civil Code have been covered.

In this case, it is just and proper that Ronnie be compensated for the serious physical injuries he suffered. It should be remembered that even though the vehicle that hit Ronnie was registered in the name of Elenita, she was not made a party in the said criminal case. Thus, she may not be compelled to answer for Eduardo's liability. Nevertheless, their conjugal partnership property may be held accountable for it since Eduardo has no property in his name. The payment of indemnity adjudged by

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[26] CIVIL CODE, Art. 1470.

[27] *Acabal v. Acabal*, 494 Phil. 528, 545 (2005).

the RTC of Bacolod City in Criminal Case No. 7155 in favor of Ronnie may be enforced against the partnership assets of spouses Elenita and Eduardo after the responsibilities enumerated under Article 161 of the Civil Code have been covered. This remedy is provided for under Article 163 of the Civil Code, *viz.*:

Art. 163. The payment of debts contracted by the husband or the wife before the marriage shall not be charged to the conjugal partnership.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

However, the payment of debts contracted by the husband or the wife before the marriage, and that of **fines and indemnities imposed upon them, may be enforced against the partnership assets after the responsibilities enumerated in Article 161 have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient**; but at the time of the liquidation of the partnership such spouse shall be charged for what has been paid for the purposes above-mentioned.[28]

Article 161 of the Civil Code enumerates the obligations which the conjugal partnership may be held answerable, *viz.*:

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;

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[28] Emphasis supplied.

(5) The maintenance of the family and the education of the children of both the 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.

The enumeration above-listed should first be complied with before the conjugal partnership may be held to answer for the liability adjudged against Eduardo.

Finally, the indemnity imposed against Eduardo shall earn an interest at the rate of twelve percent per annum, in accordance with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*.[29]

WHEREFORE, in view of the foregoing, the Decision dated November 6, 2006 and the Resolution dated July 10, 2007 of the Court of Appeals in CA-G.R. CV No. 64936 are hereby *ANNULLED* and *SET ASIDE*. The decision dated September 2, 1999 of the Regional Trial Court of Bacolod City in Civil Case No. 93-7942 is hereby *REINSTATED WITH MODIFICATION* that the conjugal properties of spouses Elenita Dewara and Eduardo Dewara shall be held to answer for the judgment of Seventy-Two Thousand Five Hundred Ninety-Eight Pesos and Seventy Centavos (₱72,598.70), plus an interest rate of twelve (12) percent per annum from the date of finality of the decision of the Regional Trial Court of Bacolod City in Criminal Case No. 7155, after complying with the provisions of Article 161 of the Civil Code.

SO ORDERED.

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

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[29] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

SECOND DIVISION

[G.R. No. 180282. April 11, 2011]

CRISPIN DICHOSO, JR., EVELYN DICHOSO VALDEZ, and ROSEMARIE DICHOSO PE BENITO, *petitioners, vs.* **PATROCINIO L. MARCOS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO ERRORS OF LAW; EXCEPTIONS. —** It is already a well-settled rule that the jurisdiction of this Court in cases brought before it from the CA by virtue of Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the CA are conclusive upon this Court. There are, however, recognized exceptions to the foregoing rule, namely: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) **when the findings are contrary to those of the trial court;** (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. **CIVIL LAW; PROPERTY; EASEMENTS; LEGAL EASEMENT OF RIGHT OF WAY; REQUISITES. —** The conferment of a legal easement of right of way is governed by Articles 649 and 650 of the Civil Code, x x x To be entitled to an easement of right of way, the following requisites should be met: 1. The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; 2. There is payment of proper indemnity; 3. The isolation is not due to the acts of the proprietor of the dominant estate; and 4. The right of way

claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

3. **ID.; ID.; ID.; ID.; OWNER OF DOMINANT ESTATE MUST SUFFICIENTLY ESTABLISH THE PRESENCE OF ALL THE PRECONDITIONS FOR THE GRANT OF EASEMENT OF RIGHT OF WAY. —** It must be stressed that, by its very nature, and when considered with reference to the obligations imposed on the servient estate, an easement involves an abnormal restriction on the property rights of the servient owner and is regarded as a charge or encumbrance on the servient estate. It is incumbent upon the owner of the dominant estate to establish by clear and convincing evidence the presence of all the preconditions before his claim for easement of right of way may be granted.

4. **ID.; ID.; ID.; ID.; NOT PROPER WHERE THERE IS NO REAL NECESSITY FOR EASEMENT, THAT MERE CONVENIENCE FOR THE DOMINANT ESTATE IS NOT SUFFICIENT JUSTIFICATION. —** Admittedly, petitioners had been granted a right of way through the other adjacent lot owned by the Spouses Arce. In fact, other lot owners use the said outlet in going to and coming from the public highway. Clearly, there is an existing outlet to and from the public road. However, petitioners claim that the outlet is longer and circuitous, and they have to pass through other lots owned by different owners before they could get to the highway. We find petitioners' concept of what is "adequate outlet" a complete disregard of the well-entrenched doctrine that in order to justify the imposition of an easement of right of way, there must be real, not fictitious or artificial, necessity for it. Mere convenience for the dominant estate is not what is required by law as the basis of setting up a compulsory easement. Even in the face of necessity, it it can be satisfied without imposing the easement, the same should not be imposed. x x x The convenience of the dominant estate has never been the gauge for the grant of compulsory right of way. To be sure, the true standard for the grant of the legal right is "adequacy." Hence, when there is already an existing adequate outlet from the dominant estate to a public highway, as in this case, even when the said outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified.

APPEARANCES OF COUNSEL

Tumaneng Narag & Associates Law Offices for petitioners.
Arnold Guerrero for respondent.

D E C I S I O N

NACHURA, *J*.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated January 31, 2007 and Resolution[2] dated October 23, 2007 in CA-G.R. CV No. 85471. The assailed Decision reversed and set aside the July 15, 2005 decision[3] of the Regional Trial Court (RTC) of Laoag City, Branch 14, in Civil Case No. 12581-14; while the assailed Resolution denied the Motion for Reconsideration filed by petitioners Crispin Dichoso, Jr., Evelyn Dichoso Valdez, and Rosemarie Dichoso Pe Benito.

The facts of the case, as culled from the records, are as follows:

On August 2, 2002, petitioners filed a Complaint for Easement of Right of Way[4] against respondent Patrocinio L. Marcos. In their complaint, petitioners alleged that they are the owners of Lot No. 21553 of the Cadastral Survey of Laoag City, covered by Transfer Certificate of Title No. T-31219; while respondent is the owner of Lot No. 1. As petitioners had no access to a public road to and from their property, they claimed to have used a portion of Lot No. 1 in accessing the road since 1970. Respondent, however, blocked the passageway with piles of sand. Though petitioners have been granted another passageway

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Conrado M. Vasquez, Jr. and Lucenito N. Tagle, concurring; *rollo*, pp. 34-46.

[2] *Id.* at 48-49.

[3] Penned by Judge Ramon A. Pacis; records, pp. 70-77.

[4] *Id.* at 1-3.

by the spouses Benjamin and Sylvia Arce (Spouses Arce), the owners of another adjacent lot, designated as Lot No. 21559-B, the former instituted the complaint before the RTC and prayed that:

WHEREFORE, it is respectfully prayed of this Honorable Court that judgment be rendered:

1. Granting the plaintiffs' right of way over an area of 54 square meters more or less of Lot 01 by paying the defendant the amount of ₱54,000.00, and that the right be annotated on defendant's title;

2. Ordering the defendant to pay the plaintiffs the sum of ₱30,000.00 as damages for attorney's fees and costs of suit;

Other reliefs, just and equitable under the premises, are likewise sought.[5]

Instead of filing an Answer, respondent moved[6] for the dismissal of the complaint on the ground of lack of cause of action and noncompliance with the requisite certificate of non-forum shopping.

During the hearing on respondent's motion to dismiss, the parties agreed that an ocular inspection of the subject properties be conducted. After the inspection, the RTC directed the parties to submit their respective position papers.

In a resolution[7] dated May 12, 2004, the RTC denied respondent's motion to dismiss and required the latter to answer petitioners' complaint.

In his Answer,[8] respondent denied that he allowed anybody to use Lot No. 1 as passageway. He stated that petitioners' claim of right of way is only due to expediency and not necessity. He also maintained that there is an existing easement of right of

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[5] *Id.* at 2.

[6] Embodied in a Motion to Dismiss dated October 16, 2002; *id.* at 11-14.

[7] *Id.* at 36-38.

[8] *Rollo*, pp. 62-64.

way available to petitioners granted by the Spouses Arce. Thus, there is no need to establish another easement over respondent's property.

In an Order[9] dated July 6, 2005, the RTC declared that respondent's answer failed to tender an issue, and opted to render judgment on the pleadings and thus deemed the case submitted for decision.

On July 15, 2005, the RTC rendered a decision[10] in favor of petitioners, the dispositive portion of which reads, as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered, as follows:
>
> 1. granting plaintiffs a right of way over an area of 54 square meters more or less over Lot 01 owned by defendant Patrocinio L. [Marcos] appearing in the Laoag City Assessor's sketch (Annex A) found on page 28 of the record of the case;
> 2. ordering plaintiffs to pay defendant the amount of ₱54,000.00 as proper indemnity; and
> 3. ordering the Register of Deeds of Laoag City to duly annotate this right of way on defendant's title to the property.
>
> SO ORDERED.[11]

The RTC found that petitioners adequately established the requisites to justify an easement of right of way in accordance with Articles 649 and 650 of the Civil Code. The trial court likewise declared petitioners in good faith as they expressed their willingness to pay proper indemnity.[12]

On appeal, the CA reversed and set aside the RTC decision and consequently dismissed petitioners' complaint. Considering that a right of way had already been granted by the (other)

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[9] Records, pp. 68-69.

[10] *Supra* note 3.

[11] Records, p. 77.

[12] *Id.* at 76.

servient estate, designated as Lot No. 21559-B and owned by the Spouses Arce, the appellate court concluded that there is no need to establish an easement over respondent's property. The CA explained that, while the alternative route through the property of the Spouses Arce is longer and circuitous, said access road is adequate. It emphasized that the convenience of the dominant estate is never the gauge for the grant of compulsory right of way. Thus, the opening of another passageway is unjustified.[13]

Aggrieved, petitioners come before this Court, raising the following issues:

I.

CAN PETITIONERS BE ENTITLED TO A GRANT OF LEGAL EASEMENT OF RIGHT OF WAY FROM THEIR LANDLOCKED PROPERTY THROUGH THE PROPERTY OF PRIVATE RESPONDENT WHICH IS THE SHORTEST ROUTE IN GOING TO AND FROM THEIR PROPERTY TO THE PUBLIC STREET AND WHERE THEY USED TO PASS?

II.

CAN RESPONDENT REFUSE TO GRANT A RIGHT OF WAY ON THE DESIRED PASSAGEWAY WHICH HE CLOSED SINCE THERE IS ANOTHER PASSAGEWAY WHICH IS MORE CIRCUITOUS AND BURDENSOME AND IS BELATEDLY OFFERED UNTO PETITIONERS?

III.

CAN PETITIONERS BE COMPELLED TO AVAIL OF A LEGAL EASEMENT OF RIGHT OF WAY THROUGH THE PROPERTY OF ARCE WHICH WAS BELATEDLY OFFERED BUT HAS BEEN FORECLOSED BY THE BANK AND WHEREIN THE LATTER IS NOT A PARTY TO THE CASE?[14]

The petition is without merit.

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[13] *Rollo*, pp. 40-45.

[14] *Id.* at 211.

It is already a well-settled rule that the jurisdiction of this Court in cases brought before it from the CA by virtue of Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the CA are conclusive upon this Court. There are, however, recognized exceptions to the foregoing rule, namely:

(1) when the findings are grounded entirely on speculation, surmises, or conjectures;

(2) when the inference made is manifestly mistaken, absurd, or impossible;

(3) when there is grave abuse of discretion;

(4) when the judgment is based on a misapprehension of facts;

(5) when the findings of fact are conflicting;

(6) when, in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(7) **when the findings are contrary to those of the trial court;**

(8) when the findings are conclusions without citation of specific evidence on which they are based;

(9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; and

(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[15]

The present case falls under the 7th exception, as the RTC and the CA arrived at conflicting findings of fact and conclusions of law.

The conferment of a legal easement of right of way is governed by Articles 649 and 650 of the Civil Code, quoted below for easy reference:[16]

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[15] *Hyatt Elevators and Escalators Corporation v. Cathedral Heights Building Complex Association, Inc.*, G.R. No. 173881, December 1, 2010.

[16] *Lee v. Carreon*, G.R. No. 149023, September 27, 2007, 534 SCRA 218, 221-222.

Article 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damages caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

Article 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

To be entitled to an easement of right of way, the following requisites should be met:

1. The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway;

2. There is payment of proper indemnity;

3. The isolation is not due to the acts of the proprietor of the dominant estate; and

4. The right of way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.[17]

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[17] *Quintanilla v. Abangan*, G.R. No. 160613, February 12, 2008, 544 SCRA 494, 499; *Cristobal v. CA*, 353 Phil. 318, 327 (1998); *Spouses Sta. Maria v.* CA, 349 Phil. 275, 283 (1998).

Petitioners may be correct in the theoretical reading of Articles 649 and 650 of the Civil Code, but they nevertheless failed to show sufficient factual evidence to satisfy the above-enumerated requirements.[18]

It must be stressed that, by its very nature, and when considered with reference to the obligations imposed on the servient estate, an easement involves an abnormal restriction on the property rights of the servient owner and is regarded as a charge or encumbrance on the servient estate. It is incumbent upon the owner of the dominant estate to establish by clear and convincing evidence the presence of all the preconditions before his claim for easement of right of way may be granted.[19] Petitioners failed in this regard.

Admittedly, petitioners had been granted a right of way through the other adjacent lot owned by the Spouses Arce. In fact, other lot owners use the said outlet in going to and coming from the public highway. Clearly, there is an existing outlet to and from the public road.

However, petitioners claim that the outlet is longer and circuitous, and they have to pass through other lots owned by different owners before they could get to the highway. We find petitioners' concept of what is "adequate outlet" a complete disregard of the well-entrenched doctrine that in order to justify the imposition of an easement of right of way, there must be real, not fictitious or artificial, necessity for it. Mere convenience for the dominant estate is not what is required by law as the basis of setting up a compulsory easement. Even in the face of necessity, if it can be satisfied without imposing the easement, the same should not be imposed.[20]

We quote with approval the CA's observations in this wise:

> As it shows, [petitioners] had been granted a right of way through the adjacent estate of Spouses Arce before the complaint below

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[18] *David-Chan v. CA*, 335 Phil. 1140, 1146 (1997).

[19] *Cristobal v. CA*, *supra* note 17, at 328.

[20] *Id.*

was even filed. [Respondent] alleged that this right of way is being used by the other estates which are similarly situated as [petitioners]. [Petitioners] do not dispute this fact. There is also a reason to believe that this right of way is Spouses Arce's outlet to a public road since their property, as it appears from the Sketch Map, is also surrounded by other estates. The fact that Spouses Arce are not insisting on a right of way through respondent's property, although an opening on the latter's property is undoubtedly the most direct and shortest distance to P. Gomez St. from the former's property, bolsters our conviction that they have adequate outlet to the highway which they are now likewise making available to [petitioners].

The convenience of the dominant estate has never been the gauge for the grant of compulsory right of way. To be sure, the true standard for the grant of the legal right is "adequacy." Hence, when there is already an existing adequate outlet from the dominant estate to a public highway, as in this case, even when the said outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified.[21]

Thus, in *Cristobal v. CA*,[22] the Court disallowed the easement prayed for because an outlet already exists which is a path walk located at the left side of petitioners' property and which is connected to a private road about five hundred (500) meters long. The private road, in turn, leads to Ma. Elena Street, which is about 2.5 meters wide, and finally, to Visayas Avenue. This outlet was determined by the Court to be sufficient for the needs of the dominant estate.

Also in *Floro v. Llenado*,[23] we refused to impose a right of way over petitioner's property although private respondent's alternative route was admittedly inconvenient because he had to traverse several ricelands and rice paddies belonging to different persons, not to mention that said passage is impassable during the rainy season.

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[21] *Costabella Corporation v. Court of Appeals*, G.R. No. 80511, January 25, 1991, 193 SCRA 333, 341.

[22] *Supra* note 17.

[23] 314 Phil. 715 (1995).

And in *Ramos v. Gatchalian Realty, Inc.,*[24] this Court refused to grant the easement prayed for even if petitioner had to pass through lots belonging to other owners, as temporary ingress and egress, which lots were grassy, cogonal, and greatly inconvenient due to flood and mud because such grant would run counter to the prevailing jurisprudence that mere convenience for the dominant estate does not suffice to serve as basis for the easement.[25]

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated January 31, 2007 and Resolution dated October 23, 2007 in CA-G.R. CV No. 85471 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182563. April 11, 2011]

JOSE MIGUEL ANTON, *petitioner, vs.* **SPOUSES ERNESTO OLIVA and CORAZON OLIVA as substituted by her legal heirs, namely: GRAZIELA MARIE COLLANTES, GRETEL ELAINE DING, GLADYS MIRIAM OLIVA, GEOFFREY JOSEPH OLIVA and GLYNNIS CARMEN CALPOTURA,** *respondents.*

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[24] 238 Phil. 689 (1987).

[25] *Cristobal v. CA*, *supra* note 17, at 329.

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATION TO PAY SHARES OF THE NET PROFITS PLUS LEGAL INTEREST ON THE SAME UNTIL THE LOAN IS PAID, PROPER AS AGREED UPON EVEN IN THE ABSENCE OF PARTNERSHIP. —** Petitioner Jose Miguel [Anton] points out that since the [respondents] Olivas were not the Antons' partners in the [Pinoy Toppings] stores, they were not entitled to receive percentage shares of the net profits from the stores' operations. But, as the CA correctly held, although the Olivas were mere creditors, not partners, the Antons agreed to compensate them for the risks they had taken. The Olivas gave the loans with no security and they were to be paid such loans only if the stores made profits. Had the business suffered losses and could not pay what it owed, the Olivas would have ultimately assumed those losses just by themselves. Still there was nothing illegal or immoral about this compensation scheme. Thus, unless the MOAs are subsequently rescinded on valid grounds or the parties mutually terminate them, the same remain valid and enforceable. It did not matter that the Antons had already paid for two of the loans and their interests. Their obligation to share net profits with the Olivas was not extinguished by such payment.

2. **ID.; ID.; ID.; PARTY HAVING RIGHT TO SHARES OF THE NET PROFITS, ALSO HAVE RIGHT TO THE SALE REPORTS. —** The CA also correctly ruled that, since the Olivas were mere creditors, not partners, they had no right to demand that the Antons make an accounting of the money loaned out to them. Still, the Olivas were entitled to know from the Antons how much net profits the three stores were making annually since the Olivas were entitled to certain percentages of those profits. Indeed, the third and second MOA directed the Antons to provide the Olivas with copies of the monthly sales reports from the operations of the stores involved, apparently to enable them to know how much were due them. There is no reason why the Antons should not furnish the Olivas copies of similar reports from the operations of the store at SM Megamall, this merely being a consequence of the Antons' obligation to share with the Olivas the net profits from that store.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
Balajadia Pineda Jacalan and Associates for respondents.

D E C I S I O N

ABAD, *J*.:

This case is about the obligation to continue complying with the terms of the agreement despite the court's declaration that no partnership exist between the parties.

The Facts and the Case

On September 9, 2008 respondents Ernesto and Corazon Oliva[1] (the Olivas) filed an action for accounting and specific performance with damages against petitioner spouses Jose Miguel and Gladys Miriam Anton (the Antons) before the Regional Trial Court (RTC) of Quezon City.[2] The Olivas alleged that they entered into three Memoranda of Agreement (MOA)[3] with Gladys Miriam, their daughter, and Jose Miguel, their son-in-law, setting up a business partnership covering three fast food stores, known as "Pinoy Toppings" that were to be established at SM Megamall, SM Cubao, and SM Southmall. Under the MOAs, the Olivas were entitled to 30% share of the net profits of the SM Megamall store and 20% in the cases of SM Cubao and SM Southmall stores.

The pertinent portions of the first MOA dated May 2, 1992, covering the SM Megamall store, provides:

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[1] Now substituted by their legal heirs Graziela Marie Collantes, Gretel Elaine Ding, Gladys Miriam Oliva, Geoffrey Joseph Oliva and Glynnis Carmen Calpotura.

[2] Docketed as Civil Case Q-98-35456.

[3] Respectively dated May 2, 1992; May 6, 1993; and April 20, 1995.

1. **That the FIRST PARTY[4] shall be considered a partner with a THIRTY PERCENT (30%) share in the above-mentioned outlet to be set up by the SECOND PARTY;[5]**

2. **That the proceeds of said business, after deducting the expenses, shall be used to pay the principal amount of ₱500,000.00 and the interest therein which is to be computed based on the bank rate since the FIRST PARTY secured the above amount through a bank loan;**

3. **That the net profits, if any, after deducting the expenses and payments of the principal and interest shall be divided in a seventy percent (70%) for the SECOND PARTY and thirty percent (30%) to the FIRST PARTY;**

4. **That the SECOND PARTY, particularly JOSE MIGUEL ANTON, shall have a free hand in running the above-described business without any interference from his partners, their agents, representatives, or assigns and should such interference happens, the SECOND PARTY has the right to buy back the share of the FIRST PARTY less the amounts already paid on the principal and to dissolve the partnership agreement. In case the above amount together with its corresponding interest had been fully paid and said interference shall take place, the SECOND PARTY shall also be entitled to dissolve the partnership agreement;**

5. **That the parties agree to strictly comply with the terms and conditions of this agreement.**

The pertinent terms of the second MOA dated May 6, 1993, covering the SM Cubao store, reads:

a. **That the First Party shall be considered a partner with a 20% share in the above-mentioned outlet to be set up by the Second Party;**

b. **That the proceeds of said business, after deducting the expenses, will be used to pay the principal amount of**

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[4] Spouses Ernesto and Corazon Oliva.

[5] Spouses Jose Miguel Anton and Gladys Miriam Anton.

₱240,000.00 and the interest therein which is to be computed based on the RCBC rate;

c. **That the net proceeds, if any, after deducting the expenses and payments of the principal and interest shall be divided on an eighty-twenty basis;**

d. **That the Second Party, particularly JOSE MIGUEL ANTON, shall have a free hand in running the above-described establishment without any interference from his partners.**

e. **That the Second Party, particularly JOSE MIGUEL ANTON shall submit his monthly sales report in connection with the above-mentioned business to his partners.**

The pertinent portions of the third MOA dated April 20, 1995, covering the SM Southmall Branch, has essentially the same terms, thus:

1. **That the First Party shall be considered a partner with a twenty (20%) percent share in the above-mentioned outlet to be set up by the Second Party;**

2. **That the proceeds of said business, after deducting the expenses, will be used to pay the principal amount of ₱300,000.00;**

3. **That the net profits, if any, after deducting the expenses and payments of the principal and interest shall be divided on a eighty-twenty percent;**

4. **That the Second Party, particularly JOSE MIGUEL ANTON, shall have a free hand in running the above-described business without any interference from his partners;**

5. **That the Second Party, particularly JOSE MIGUEL ANTON shall submit his monthly sales report in connection with the above business.**

The Olivas alleged that while the Antons gave them a total of ₱2,547,000.00 representing their monthly shares of the net profits from the operations of the SM Megamall and SM Southmall

stores, the Antons did not give them their shares of the net profits from the store at SM Cubao. Further, Jose Miguel did not render to them an account of the operations of the three stores. And, beginning November 1997, the Antons altogether stopped giving the Olivas their share in the net profits of the three stores. The Olivas demanded an accounting of partnership funds but, in response, Jose Miguel terminated their partnership agreements.

Answering the complaint, Jose Miguel alleged that he and his wife, Gladys Miriam, never partnered with the Olivas in the operations of the three stores. The Antons merely borrowed money from the Olivas to finance the opening of those stores. Gladys Miriam, who managed the operations of the business, remitted to the Olivas the amounts due them even after the loans had been paid. If any accounting was needed, it should only be for the purpose of ascertaining the correctness of the payments made.

On Gladys Miriam's part, she affirmed having managed the three stores up until she and Jose Miguel separated. They paid the Olivas in checks, representing their share in the profits of the business. Gladys Miriam filed a case for legal separation against her husband, Jose Miguel, prompting the latter to terminate their business partnership with her parents.

On October 17, 2003 the RTC rendered judgment,[6] holding that no partnership relation existed between the Olivas and the Antons but Jose Miguel had an obligation to render an accounting from the start of the business until the termination of their MOAs and, thereafter, pay the Olivas their share of the net profits, if any, plus interests.

Jose Miguel appealed the RTC decision to the Court of Appeals (CA) in CA-G.R. CV 85521.[7] On November 22, 2007 the CA rendered a decision, essentially affirming the RTC finding that no partnership existed between the parties. But the CA modified

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[6] Decision, pp. 925-932, RTC records.

[7] *Rollo*, pp. 34-46.

the RTC decision and a) deleted the RTC order that directed the Antons to get an independent accountant, approved by the Olivas, to do an accounting of the operations of the three stores; b) directed the Antons to pay the Olivas the ₱240,000.00 loan in connection with the third MOA as well as their share in the net profits of the three stores from November 1997 to the present, with legal interest until the same shall have been paid in full; and c) ordered the Antons to furnish the Olivas copies of the monthly sales reports of the stores at SM Southmall and SM Cubao as provided in the May 6, 1993 and April 20, 1995 MOAs, from November 1997 to the present.

The Key Issue Presented

The key issue in this case is whether or not the CA erred in holding that, notwithstanding the absence of a partnership between the Olivas and the Antons, the latter have the obligation to pay the former their shares of the net profits of the three stores plus legal interest on those shares until they have been paid.

Ruling of the Court

To begin with, the Court will not disturb the finding of both the RTC and the CA that, based on the terms of the MOAs and the circumstances surrounding its implementation, the relationship between the Olivas and the Antons was one of creditor-debtor, not of partnership. The finding is sound since, although the MOA denominated the Olivas as "partners," the amounts they gave did not appear to be capital contributions to the establishment of the stores. Indeed, the stores had to pay the amounts back with interests. Moreover, the MOAs forbade the Olivas from interfering with the running of the stores. At any rate, none of the parties has made an issue of the common finding of the courts below respecting the nature of their relationship.

Petitioner Jose Miguel points out that since the Olivas were not the Antons' partners in the stores, they were not entitled to receive percentage shares of the net profits from the stores' operations.

But, as the CA correctly held, although the Olivas were mere creditors, not partners, the Antons agreed to compensate them for the risks they had taken. The Olivas gave the loans with no security and they were to be paid such loans only if the stores made profits. Had the business suffered losses and could not pay what it owed, the Olivas would have ultimately assumed those losses just by themselves. Still there was nothing illegal or immoral about this compensation scheme. Thus, unless the MOAs are subsequently rescinded on valid grounds or the parties mutually terminate them, the same remain valid and enforceable.

It did not matter that the Antons had already paid for two of the loans and their interests. Their obligation to share net profits with the Olivas was not extinguished by such payment. Indeed, the Antons paid the Olivas their share of the profits from two stores although the loans corresponding to them had in the meantime been paid. Only after Jose Miguel's marital relation with Gladys Miriam turned sour in November 1997 did he cease to pay the Olivas their shares of the profits.

The CA also correctly ruled that, since the Olivas were mere creditors, not partners, they had no right to demand that the Antons make an accounting of the money loaned out to them. Still, the Olivas were entitled to know from the Antons how much net profits the three stores were making annually since the Olivas were entitled to certain percentages of those profits. Indeed, the third and second MOA directed the Antons to provide the Olivas with copies of the monthly sales reports from the operations of the stores involved, apparently to enable them to know how much were due them. There is no reason why the Antons should not furnish the Olivas copies of similar reports from the operations of the store at SM Megamall, this merely being a consequence of the Antons' obligation to share with the Olivas the net profits from that store.

Jose Miguel also complains that the CA had no basis in awarding interest on the third loan covering the establishment of the SM Southmall store since the particular MOA did not provide for such interest. But, actually, the interests that the CA awarded to the Olivas referred, not to interests on the loans they gave,

but to interest that their unpaid shares of the net profits of the three stores should earn on account of Jose Miguel's unjustified refusal to pay them beginning November 1997.

Given that the legal interests that the CA directed the Antons to pay referred to the Olivas' unpaid shares of the net profits of the three stores from November 1997, such interests cannot be regarded as forbearance for money that warrants an interest of 12% per annum. Rather, they were for unjust withholding of the Olivas' shares of the net profits from the Antons' three stores that would warrant an interest of 6% per annum.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision dated November 22, 2007 of the Court of Appeals in CA-G.R. CV 85521 with the following *MODIFICATIONS*:

1. The legal interest that petitioner Jose Miguel Anton shall pay respondent Ernesto Oliva and the substituted heirs of respondent Corazon Oliva on their unpaid shares in the net profits of the "Pinoy Toppings" stores at SM Southmall, SM Megamall, and SM Cubao shall be computed at the rate of 6% per annum; and

2. Petitioner Jose Miguel Anton is to furnish respondent Ernesto Oliva and the substituted legal heirs of respondent Corazon Oliva copies of the monthly sales reports of all three "Pinoy Toppings" stores at SM Southmall, SM Cubao, and SM Megamall from November 1997 until the proper termination of their Memoranda of Agreement dated May 2, 1992, May 6, 1993, and April 20, 1995.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183575. April 11, 2011]

SPOUSES ROGELIO MARCELO and MILAGROS MARCELO, *petitioners, vs.* **LBC BANK,** *respondent.*

SYLLABUS

REMEDIAL LAW; COURT OF APPEALS; ADMISSION AND APPRECIATION OF BELATEDLY SUBMITTED DOCUMENTARY EVIDENCE, ALLOWED. — In *Maralit v. Philippine National Bank*, where petitioner Maralit questioned the appellate court's admission and appreciation of a belatedly submitted documentary evidence, the Court held that "[i]n a special civil action for *certiorari*, the Court of Appeals has ample authority to receive new evidence and perform any act necessary to resolve factual issues." The Court explained further: Section 9 of Batas Pambansa Blg. 129, as amended, states that, "The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings." x x x Clearly, the Court of Appeals did not err in admitting the evidence showing LBC Bank's express ratification of Milan's consolidation of the title over the subject property. Further, the Court of Appeals did not err in admitting such evidence in resolving LBC Bank's motion for reconsideration in a special civil action for *certiorari*. To rule otherwise will certainly defeat the ends of substantial justice.

APPEARANCES OF COUNSEL

Villacorta Law Office for petitioners.
Agnes Awanin-Felicidario for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 26 March 2008 Amended Decision[2] and 27 June 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 90166. In the 26 March 2008 Amended Decision, the Court of Appeals modified its original decision of 16 June 2006 and affirmed the trial court's decision of 1 December 2004 directing the issuance of a writ of possession in favor of respondent LBC Bank (LBC Bank). In the 27 June 2008 Resolution, the Court of Appeals denied reconsideration.

The Facts

On 16 April 1997, petitioners Spouses Rogelio and Milagros Marcelo (Spouses Marcelo) obtained a ₱3 million loan from LBC Bank. On 27 May 1998, Spouses Marcelo obtained another loan from LBC Bank in the amount of ₱2.3 million. The two loans were secured by a real estate mortgage over a parcel of land located in Baliuag, Bulacan and covered by Transfer Certificate of Title (TCT) No. N-64135 in the name of Spouses Marcelo.

Spouses Marcelo defaulted in the payment of their loans. Consequently, LBC Bank sought the extra-judicial foreclosure of the real estate mortgage on 15 October 1998.

On 21 October 1998, the Office of the Clerk of Court and the *Ex-Officio* Sheriff of Malolos, Bulacan, issued a Notice of Sheriff's Sale. After the posting and publication of the Notice of Sale, the mortgaged property was sold at a public auction on 25 November 1998. LBC Bank, being the highest bidder, was

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

[2] *Rollo*, pp. 32-42. Penned by Associate Justice Noel G. Tijam, with Associate Justices Mario L. Guariña, III and Mariflor Punzalan-Castillo, concurring.

[3] *Id.* at 44-46.

issued a Certificate of Sale, which was eventually registered with the Bulacan Registry of Deeds.

Spouses Marcelo failed to redeem the property within the prescribed period. As a result, on 5 December 2000, LBC Bank's Mecauayan Branch Manager, Ricardo B. Milan, Jr. (Milan), executed an Affidavit of Consolidation of Title, which was filed with the Bulacan Registry of Deeds. On 1 February 2001, Spouses Marcelo's title to the subject property was cancelled and TCT No. T-145323 was issued in LBC Bank's name.

On 12 October 2004, LBC Bank filed with the Regional trial Court of Bulacan, Branch 11, a petition[4] for the issuance of a writ of possession over the foreclosed property.

The Trial Court's Ruling

On 1 December 2004, the trial court rendered a decision, granting the petition and directing the issuance of a writ of possession in favor of LBC Bank, to wit:

> WHEREFORE, finding the petition to be sufficient in form and substance and the allegations therein to be meritorious, the same is hereby GRANTED.
>
> Let writ of possession in favor of LBC Bank be issued accordingly.
>
> SO ORDERED.[5]

Spouses Marcelo moved for reconsideration, contending that LBC Bank's consolidation of title was invalid since the affidavit of consolidation was executed by Milan who was allegedly unauthorized to do so. Spouses Marcelo further argued that the petition for the issuance of a writ of possession was insufficient in form for being verified by one Rosario B. Aotriz who lacked authority to perform such act.

The trial court denied the motion for reconsideration in an Order dated 17 May 2005.[6]

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[4] Docketed as P-525-2004.

[5] Records, p. 55. Penned by Judge Basilio R. Gabo, Jr.

[6] *Id.* at 56.

Spouses Marcelo filed a petition for *certiorari* with the Court of Appeals. Spouses Marcelo claimed that the trial court gravely abused its discretion in directing the issuance of a writ of possession in favor of LBC Bank. Spouses Marcelo alleged that there was no evidence that Milan was the authorized representative of LBC Bank to consolidate ownership over the foreclosed property. Absent such evidence, Milan was allegedly unauthorized, and thus, there was no proper consolidation of title in favor of LBC Bank. Therefore, LBC Bank was not entitled to a writ of possession.

The Court of Appeals' Ruling

On 16 June 2006, the Court of Appeals rendered a decision,[7] initially granting Spouses Marcelo' *certiorari* petition and disposing of the case as follows:

> WHEREFORE, this petition for *certiorari* is GRANTED. Accordingly, the Decision dated December 1, 2004 and the Order dated May 17, 2005 of the Regional Trial Court of Bulacan, Branch 11 in P-525-2004 are hereby ANNULLED and SET ASIDE.
>
> SO ORDERED.[8]

LBC Bank filed a motion for reconsideration,[9] attaching thereto the (1) Affidavit of Ma. Tara O. Aznar,[10] Chief Finance Officer of LBC Bank, attesting to the practice and policy of LBC Bank that Branch Managers are responsible for all accounts within their branch's jurisdiction with full authority to foreclose secured accounts and consolidate ownership as may be warranted; (2) Secretary's Certificate,[11] dated 27 June 2006, expressly confirming and ratifying the "implied and apparent authority" of Milan to consolidate ownership over the subject property;

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[7] *Id.* at 154-164.

[8] *Id.* at 163-164.

[9] *Id.* at 165-175.

[10] *Id.* at 195.

[11] *Id.* at 196. Executed by Jennifer D. Fajelagutan, Assistant Corporate Secretary of LBC Bank.

and (3) Secretary's Certificate,[12] dated 1 July 2005, authorizing Ma. Tara O. Aznar, among others, to "act as authorized signatory in x x x Affidavit/s of Witness/es and other pleadings relevant to the cases of the Bank."

On 26 March 2008, the Court of Appeals rendered an Amended Decision granting the motion for reconsideration "in the interest of substantial justice." The Court of Appeals considered the documents submitted by LBC Bank, namely, the Affidavit of its Chief Finance Officer and the Secretary's Certificate, "showing that LBC Bank ratified the questioned consolidation of the subject property." The dispositive portion of the Amended Decision reads:

> WHEREFORE, the June 16, 2006 Decision is hereby AMENDED. Accordingly, the petition for *certiorari* is DENIED. The assailed Decision dated December 1, 2004 and the Order dated May 17, 2005 of the Regional Trial Court of Bulacan, Branch 11 in P-525-2004 are AFFIRMED.
>
> SO ORDERED.[13]

The Court of Appeals denied the motion for reconsideration in a Resolution dated 27 June 2008.

The Issue

The sole issue in this case is whether the Court of Appeals can admit new evidence in a special civil action for *certiorari*.

The Ruling of the Court

The petition lacks merit.

In their petition for *certiorari* before the Court of Appeals, Spouses Marcelo insisted that Milan had no authority to consolidate the title over the foreclosed property on behalf of LBC Bank.

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[12] *Id.* at 197-198. Executed by Jennifer D. Fajelagutan, Assistant Corporate Secretary of LBC Bank.

[13] *Id.* at 41-42.

On the other hand, LBC Bank claimed that Milan had such authority as indicated in the Secretary's Certificate dated 9 March 2000, which pertinently states that "the Board hereby confirms and ratifies the authority of [Milan] x x x to file and prosecute to its conclusion, criminal and civil cases for and in behalf of LBC Development Bank and to enter into compromise agreement or execute an affidavit of desistance upon final settlement of criminal/civil complaints/cases, as fully to all intents and purposes as might or could be lawfully done by this Bank"; x x x.

As stated, the Court of Appeals initially ruled in favor of Spouses Marcelo. However, upon submission by LBC Bank of documents expressly and unequivocally confirming and ratifying Milan's authority to consolidate the title over the foreclosed property, the Court of Appeals amended its original decision.

Spouses Marcelo fault the Court of Appeals for admitting and considering the Affidavit of Ma. Tara O. Aznar, dated 10 July 2006, and the Secretary's Certificates dated 27 June 2006 and 1 July 2005 in resolving LBC Bank's motion for reconsideration of the Court of Appeals' 16 June 2006 Decision. Spouses Marcelo contend that in a special civil action for *certiorari*, the Court of Appeals cannot admit new evidence. Spouses Marcelo further submit that the sole office of the writ of *certiorari* is the correction of errors of jurisdiction, and thus, the Court of Appeals erred in admitting the "additional evidence."

The Court is not convinced.

In *Maralit v. Philippine National Bank*,[14] where petitioner Maralit questioned the appellate court's admission and appreciation of a belatedly submitted documentary evidence, the Court held that "[i]n a special civil action for *certiorari*, the Court of Appeals has ample authority to receive new evidence and perform any act necessary to resolve factual issues." The Court explained further:

> Section 9 of Batas Pambansa Blg. 129, as amended, states that, "The Court of Appeals shall have the power to try cases and conduct

[14] G.R. No. 163788, 24 August 2009, 596 SCRA 662.

hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings."[15]

Likewise, in *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*,[16] the Court held:

> [I]t is already settled that under Section 9 of *Batas Pambansa Blg*. 129, as amended by Republic Act No. 7902 (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg*. 129 as amended, known as the Judiciary Reorganization Act of 1980), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. As clearly stated in Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act 7902:
>
> > The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x.

Clearly, the Court of Appeals did not err in admitting the evidence showing LBC Bank's express ratification of Milan's consolidation of the title over the subject property. Further, the Court of Appeals did not err in admitting such evidence in resolving LBC Bank's motion for reconsideration in a special civil action for *certiorari*. To rule otherwise will certainly defeat the ends of substantial justice.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the 26 March 2008 Amended Decision and 27 June 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 90166.

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[15] *Id.* at 682.

[16] G.R. No. 153144, 12 October 2006, 504 SCRA 336, 348-350, cited in *Maralit v. Philippine National Bank*, *supra*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186070. April 11, 2011]

CLIENTLOGIC PHILIPPINES, INC. (now known as SITEL), JOSEPH VELASQUEZ, IRENE ROA, and RODNEY SPIRES, *petitioners, vs.* **BENEDICT CASTRO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ERRORS OF FACT, NOT PROPER. —** The alleged errors of the CA lengthily enumerated in the petition are essentially factual in nature and, therefore, outside the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. The Court does not try facts since such statutory duty is devolved upon the labor tribunals. It is not for this Court to weigh and calibrate pieces of evidence otherwise adequately passed upon by the labor tribunals especially when affirmed by the appellate court.

2. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; MANAGERIAL EMPLOYEES; TEST IS WHETHER THE EMPLOYEE POSSESSES AUTHORITY TO ACT IN THE INTEREST OF HIS EMPLOYER AND THE SAME REQUIRES THE USE OF INDEPENDENT JUDGMENT. —** The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. The position held by respondent and its concomitant duties failed to hurdle this test.

3. **ID.; ID.; ID.; DUTIES ATTRIBUTABLE TO MEMBER OF THE MANAGERIAL STAFF; NOT PRESENT IN THE JOB DESCRIPTION OF EMPLOYEE IN CASE AT BAR; AS REGULAR EMPLOYEE, RESPONDENT IS ENTITLED TO HOLIDAY PAY, SERVICE INCENTIVE LEAVE PAY, OVERTIME PAY AND REST DAY PAY. —** As a coach or team supervisor, respondent's main duty was to deal with customer complaints which could not be handled or solved by call center agents. If the members of his team could not meet the needs of a customer, they passed the customer's call to respondent. This job description does not indicate that respondent can exercise the powers and prerogatives equivalent to managerial actions which require the customary use of independent judgment. There is no showing that he was actually conferred or was actually exercising the following duties attributable to a "member of the managerial staff," *viz:* 1) The primary duty consists of the performance of work directly related to management of policies of their employer; 2) Customarily and regularly exercise discretion and independent judgment; 3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute, under general supervision, special assignment and tasks; and 4) Who do not devote more than 20 percent of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2), and (3) above. x x x From the foregoing, respondent is thus entitled to his claims for holiday pay, service incentive leave pay, overtime pay and rest day pay, pursuant to Book Three of the Labor Code, specifically Article 82, in relation to Articles 87, 93, and 95 thereof.

APPEARANCES OF COUNSEL

E.M. Avila Law Offices for petitioners.
E.L. Gayo & Associates Law Office for respondent.

DECISION

NACHURA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the September 1, 2008 Decision[1] and the January 7, 2009 Resolution[2] of the Court of Appeals (CA), affirming with modification the November 29, 2007 resolution[3] of the National Labor Relations Commission (NLRC), which held that respondent Benedict Castro was not illegally dismissed. The CA, however, awarded respondent's money claims, *viz.*:

WHEREFORE, premises considered, the instant Petition is **PARTLY GRANTED**. The Resolutions dated 29 November 2007 and 23 January 2008 of the National Labor Relations Commission (Third Division) in *NLRC CN. RAB-CAR-02-0091-07 LAC NO. 08-002207-07* are **AFFIRMED** with **MODIFICATION** in that the monetary awards of Executive Labor Arbiter Vito C. Bose in his Decision dated 29 June 2007, as computed in Annex "A" thereof, **ONLY** for holiday premiums of Php 16,913.35; service incentive leave pay Php8,456.65; overtime pay of Php 578,753.10; and rest day pay of Php 26,384.80 which (petitioners) shall jointly and solidarily pay to petitioner, are hereby **REINSTATED**. No pronouncement as to costs.

SO ORDERED.[4]

The second assailed issuance of the CA denied petitioners' motion for reconsideration.

The facts:

Respondent was employed by petitioner ClientLogic Philippines, Inc. (now known and shall hereafter be referred to as SITEL) on February 14, 2005 as a call center agent for its Bell South

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[1] *Rollo*, pp. 33-51.

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

[3] *Id.* at 83-90.

[4] *Supra* note 1, at 48.

Account. After six (6) months, he was promoted to the "Mentor" position, and thereafter to the "Coach" position. A "Coach" is a team supervisor who is in charge of dealing with customer complaints which cannot be resolved by call center agents. In June 2006, he was transferred to the Dot Green Account.

During respondent's stint at the Dot Green Account, respondent noticed that some of the call center agents under him would often make excuses to leave their work stations. Their most common excuse was that they would visit the company's medical clinic. To verify that they were not using the clinic as an alibi to cut their work hours, respondent sent an e-mail to the clinic's personnel requesting for the details of the agents' alleged medical consultation. His request was denied on the ground that medical records of employees are highly confidential and can only be disclosed in cases involving health issues, and not to be used to build any disciplinary case against them.

On October 11, 2006, respondent received a notice requiring him to explain why he should not be penalized for: (1) violating Green Dot Company's Policy and Procedure for Direct Deposit Bank Info Request when he accessed a customer's online account and then gave the latter's routing and reference numbers for direct deposit; and (2) gravely abusing his discretion when he requested for the medical records of his team members. Respondent did not deny the infractions imputed against him. He, however, justified his actuations by explaining that the customer begged him to access the account because she did not have a computer or an internet access and that he merely requested for a patient tracker, not medical records.

In November 2006, a poster showing SITEL's organizational chart was posted on the company's bulletin board, but respondent's name and picture were conspicuously missing, and the name and photo of another employee appeared in the position which respondent was supposedly occupying.

On January 22, 2007, SITEL posted a notice of vacancy for respondent's position, and on February 12, 2007, he received a Notice of Termination. These events prompted him to file a

complaint for illegal dismissal; non-payment of overtime pay, rest day pay, holiday pay, service incentive leave pay; full backwages; damages; and attorney's fees before the Labor Arbiter (LA) against herein petitioners SITEL and its officers, Joseph Velasquez (Velasquez), Irene Roa (Roa), and Rodney Spires (Spires).[5]

In their position paper,[6] petitioners averred that respondent was dismissed on account of valid and justifiable causes. He committed serious misconduct which breached the trust and confidence reposed in him by the company. He was duly furnished the twin notices required by the Labor Code. Further, he is not entitled to overtime pay, rest day pay, night shift differential, holiday pay, and service incentive leave pay because he was a supervisor, hence, a member of the managerial staff.

In a decision dated June 29, 2007,[7] the LA ruled in favor of respondent by declaring him illegally dismissed and ordering petitioners to pay his full backwages and, in lieu of reinstatement, his separation pay. The LA further awarded respondent's money claims upon finding that he was not occupying a managerial position. The decretal portion of the decision reads:

> WHEREFORE, all premises duly considered, the (petitioners) are hereby found guilty of illegally dismissing (respondent). As such, (petitioners) shall be jointly and solidarily liable to pay (respondent) his full backwages from the date of his dismissal to the finality of this decision, computed as of today at **One Hundred Thirty Eight Thousand Seven Hundred Fifty Nine Pesos and 80/100 (₱138,759.80)** plus, **Seven Hundred Sixty Three Thousand Two Hundred Forty Eight Pesos and 67/100 (₱763,248.67)** representing his separation pay at one month pay for every year of service, holiday pay and service incentive leave pay for the three years prior to the filing of this case, overtime pay for six (6) hours daily, rest day and ten percent (10%) as attorney's fees.

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[5] Respondent's Position Paper as cited in pages 2-3 of the CA Decision; *supra* note 1.

[6] *Rollo*, pp. 128-161.

[7] *Id.* at 69-81.

All other claims are hereby dismissed for lack of evidence.

The computation of the foregoing monetary claims is hereto attached and made an integral part hereof as Annex "A".

SO ORDERED.[8]

Aggrieved, petitioners appealed to the NLRC, which, in its November 29, 2007 resolution,[9] reversed and set aside the decision of the LA by dismissing the complaint for lack of merit on the ground that respondent's employment was terminated for a just cause. The NLRC failed to discuss the money claims.

On September 1, 2008, the CA affirmed the NLRC's finding that there was no illegal dismissal. Anent the money claims, however, the CA concurred with the LA's ruling.[10]

Petitioners and respondent respectively moved for partial reconsideration, but their motions were denied in the CA Resolution dated January 7, 2009.[11] From the said denial, only petitioners sought recourse with this Court through the petition at bar. Respondent's failure to partially appeal the CA's Decision finding him not illegally dismissed has now rendered the same final and executory; hence, the instant petition shall traverse only the issue on money claims.

Petitioners argue in the main[12] that, as a team supervisor, respondent was a member of the managerial staff; hence, he is

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[8] *Id.* at 79-80.

[9] *Supra* note 3.

[10] *Supra* note 1.

[11] *Supra* note 2.

[12] In their petition, petitioners ascribe the following errors to the CA:

I. REINSTATING THE LABOR ARBITER'S RULING THAT —

(a) PRIVATE RESPONDENT BENEDICT CASTRO'S DUTIES WITH THE COMPANY AS SIMPLY CHARACTERIZED AS, LIMITED TO, CATCHING A CUSTOMER CALL/COMPLAINTS WHEN THE SAME COULD NOT BE ADDRESSED BY CALL CENTER AGENTS;

(b) PRIVATE RESPONDENT BENEDICT CASTRO'S DUTIES WITH THE COMPANY DO NOT MAKE HIM FALL UNDER THE

not entitled to overtime pay, rest day pay, holiday pay, and service incentive leave pay.

We deny the petition.

The petition hinges on the question of whether the duties and responsibilities performed by respondent qualify him as a member of petitioners' managerial staff. This is clearly a question of fact, the determination of which entails an evaluation of the evidence on record.

The alleged errors of the CA lengthily enumerated in the petition[13] are essentially factual in nature and, therefore, outside the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. The Court does not try facts since such statutory duty is devolved upon the labor tribunals. It is not for this Court to weigh and calibrate pieces of evidence

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CATEGORY OF A "MANAGERIAL" EMPLOYEE OR A "MEMBER OF THE MANAGERIAL STAFF";

(c) PRIVATE RESPONDENT BENEDICT CASTRO IS "JUST A TEAM SUPERVISOR" IMPLYING THAT HE IS NOT A SUPERVISOR CONTEMPLATED BY LAW AS BEING EXEMPT FROM PAYMENT OF HOLIDAY PAY, OVERTIME PAY, REST DAY PAY, AND SERVICE INCENTIVE LEAVE PAY;

(d) PRIVATE RESPONDENT BENEDICT CASTRO'S WORK WAS NOT DIRECTLY RELATED TO MANAGEMENT POLICIES;

(e) SINCE PRIVATE RESPONDENT BENEDICT CASTRO WAS PAID HIS 13TH MONTH PAY, THE SAME PRECLUDES HIM FROM BEING A "MEMBER OF THE MANAGERIAL STAFF"

II. IN RELATION TO THE FOREGOING, REINSTATING THE LABOR ARBITER'S FINDING THAT PRIVATE RESPONDENT BENEDICT CASTRO IS ENTITLED TO HOLIDAY PAY, OVERTIME PAY, REST DAY PAY AND SERVICE INCENTIVE LEAVE PAY;

III. FAILING TO CONSIDER ADMITTED AND OTHERWISE UNDISPUTED FACTS ESSENTIAL AND RELEVANT IN THE DETERMINATION AS TO WHETHER OR NOT PRIVATE RESPONDENT IS ENTITLED TO HOLIDAY PAY, OVERTIME PAY, REST DAY PAY AND SERVICE INCENTIVE LEAVE PAY. (*Rollo*, p. 22.)

[13] *Id.*

otherwise adequately passed upon by the labor tribunals especially when affirmed by the appellate court.[14]

Petitioners claim exception to the foregoing rule and assert that the factual findings of the LA and the NLRC were conflicting. This is not correct. The labor tribunals' decisions were at odds only with respect to the issue of illegal dismissal. Anent the money claims issue, it cannot be said that their rulings were contradictory because the NLRC, disappointingly, did not make any finding thereon and it erroneously construed that the resolution of the money claims was intertwined with the determination of the legality of respondent's dismissal. Nonetheless, the CA has already rectified such lapse when it made a definitive review of the LA's factual findings on respondent's money claims. Agreeing with the LA, the CA held:

> Article 82 of the Labor Code states that the provisions of the Labor Code on working conditions and rest periods shall not apply to managerial employees. Generally, managerial employees are not entitled to overtime pay for services rendered in excess of eight hours a day.
>
> Article 212 (m) of the Labor Code defines a managerial employee as "one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions.
>
> In his Position Paper, (respondent) states that he worked from 8:00 p.m. to 10:00 a.m. or 4 p.m. to 12:00 p.m. of the following day; he was also required to work during his restdays and during holidays but he was not paid; he was also not paid overtime pay; night shift differentials, and service incentive leave. He was employed as call center agent on 14 February 2005, then promoted as "Mentor" in August 2005, and again promoted to "Coach" position in September 2005, which was the position he had when he was terminated. A "coach" is a team supervisor who is in charge of dealing with customer complaints which could not be dealt with by call center agents, and

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[14] See *Diversified Security, Inc. v. Bautista*, G.R. No. 152234, April 15, 2010, 618 SCRA 28, 293, citing *Reyes v. National Labor Relations Commission*, G.R. No. 160233, August 8, 2007, 529 SCRA 487, 494.

if a call center agent could not meet the needs of a customer, he passes the customer's call to the "coach." Clearly, (respondent) is not a managerial employee as defined by law. Thus, he is entitled to his money claims.

As correctly found by Executive Labor Arbiter Bose:

Employees are considered occupying managerial positions if they meet all of the following conditions, namely:

1) Their primary duty consists of management of the establishment in which they are employed or of a department or subdivision thereof;

2) They customarily and regularly direct the work of two or more employees therein;

3) They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.

They are considered as officers or members of a managerial staff if they perform the following duties and responsibilities:

1) The primary duty consists of the performance of work directly related to management of policies of their employer;

2) Customarily and regularly exercise discretion and independent judgment;

3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute, under general supervision, special assignment and tasks xxx.

(Respondent's) duties do not fall under any of the categories enumerated above. His work is not directly related to management policies. Even the circumstances shown by the instant case reveal that (respondent) does not regularly exercise discretion and independent judgment. (Petitioners) submitted a list of the responsibilities of "HR Manager/Supervisor" and "Division Manager/ Department Manager/Supervisors" but these do not pertain to

(respondent) who does not have any of the said positions. He was just a team Supervisor and not (an) HR or Department Supervisor.[15]

We find no reversible error in the above ruling. The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment.[16] The position held by respondent and its concomitant duties failed to hurdle this test.

As a coach or team supervisor, respondent's main duty was to deal with customer complaints which could not be handled or solved by call center agents. If the members of his team could not meet the needs of a customer, they passed the customer's call to respondent.

This job description does not indicate that respondent can exercise the powers and prerogatives equivalent to managerial actions which require the customary use of independent judgment. There is no showing that he was actually conferred or was actually exercising the following duties attributable to a "member of the managerial staff," *viz.*:

1) The primary duty consists of the performance of work directly related to management of policies of their employer;

2) Customarily and regularly exercise discretion and independent judgment;

3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or

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[15] *Supra* note 1, at 46-48.

[16] *Gonzales v. NLRC, et al.,* G.R. No. 131653, March 26, 2001, 355 SCRA 195, 208, citing *Magos v. NLRC,* G.R. No. 123421, December 28, 1998, 300 SCRA 484, 490; see also *A. D. Gothong Manufacturing Corporation Employees Union-ALU v. Hon. Nieves Confessor, et al.,* 376 Phil. 168, 173-174 (1999), citing *Franklin Baker Company of the Philippines v. Trajano*, 241 Phil. 432, 439 (1988).

technical lines requiring special training, experience, or knowledge; or (iii) execute, under general supervision, special assignment and tasks; and

4) Who do not devote more than 20 percent of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2), and (3) above.[17]

According to petitioners, respondent also performed the following duties, as shown in the company's Statement of Policy on Discipline:

a. Know and understand in full the Policy on Discipline including their underlying reasons.

b. Implement strictly and consistently the Policy on Discipline.

c. Ensure that the said Policy on Discipline is communicated to and understood by all employees.

d. Monitor compliance by employees with the said Policy.

e. Advise HR Manager on the state of discipline in their respective departments; problems, if any, and recommend solution(s) and corrective action(s).

As correctly observed by the CA and the LA, these duties clearly pertained to "Division Managers/Department Managers/ Supervisors," which respondent was not, as he was merely a team supervisor. Petitioners themselves described respondent as "the superior of a call center agent; he heads and guides a specific number of agents, who form a team."[18]

From the foregoing, respondent is thus entitled to his claims for holiday pay, service incentive leave pay, overtime pay and rest day pay, pursuant to Book Three of the Labor Code, specifically Article 82,[19] in relation to Articles

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[17] Implementing Rules of the Labor Code, Book III, Rule I, Sec. 2(c).

[18] *Rollo*, pp. 11-30.

[19] Art. 82. Coverage. — **The provisions of this title shall apply to employees in all establishment and undertakings whether for profit or**

87,[20] 93,[21] and 95[22] thereof.

WHEREFORE, premises considered, the Petition is hereby *DENIED*. The September 1, 2008 Decision and the January 7, 2009 Resolution of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

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

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not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results xxx. (Emphasis Supplied)

[20] Art. 87. *Overtime work.* — Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, an additional compensation equivalent to his regular wage plus at least twenty-five (25%) per cent thereof. Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty percent thereof."

[21] Art. 93. *Compensation for rest day, Sunday or holiday work.* — (a) Where an employee is made or permitted to work on his scheduled rest day, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage. An employee shall be entitled to such additional compensation for work performed on Sunday only when it is his established rest day.

(b) When the nature of the work of the employee is such that he has no regular workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage for work performed on Sundays and holidays.

(c) Work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee. Where such holiday work falls on the employees scheduled rest day, he shall be entitled to an additional compensation of at least fifty percent (50%) of his regular wage.

(d) Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Article, the employer shall pay such higher rate.

[22] Art. 95. Right to Service Incentive Leave. — (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay. x x x.

SECOND DIVISION

[G.R. No. 186243. April 11, 2011]

HACIENDA PRIMERA DEVELOPMENT CORPORATION and ANNA KATRINA E. HERNANDEZ, *petitioners, vs.* **MICHAEL S. VILLEGAS,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; PROBATIONARY EMPLOYMENT; GOVERNING LAWS AND DESCRIPTION THEREOF. —** [Art. 281 of the] Labor Code and [Sec. 6 of] its Implementing Rules govern probationary employment. x x x In *Magis Young Achievers' Learning Center v. Manalo,* the Court described probationary employment in this wise: A probationary employee or probationer is one who is on trial for an employer, during which the latter determines whether or not he is qualified for permanent employment. The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word *probationary,* as used to describe the period of employment, implies the purpose of the term or period, not its length.

2. **ID.; ID.; ID.; TERMINATION OF A PROBATIONARY EMPLOYEE; FAILURE TO QUALIFY AS A REGULAR EMPLOYEE IN ACCORDANCE WITH REASONABLE STANDARDS MADE KNOWN TO THE EMPLOYEE AT THE START OF EMPLOYMENT; NOT APPLICABLE WHERE SAID STANDARDS NOT MADE KNOWN. —** It can be gleaned from the foregoing provisions of law and jurisprudential pronouncement that there are two grounds to legally terminate a probationary employee. It may be done either: a) for a just cause; or b) when the employee fails to qualify as a regular employee in accordance with reasonable

standards made known by the employer to the employee at the start of the employment. In this case, petitioner Hacienda fails to specify the reasonable standards by which respondent's alleged poor performance was evaluated, much less to prove that such standards were made known to him at the start of his employment. Thus, he is deemed to have been hired from day one as a regular employee. Due process dictates that an employee be apprised beforehand of the condition of his employment and of the terms of advancement therein. In *Secon Philippines, Ltd. v. NLRC*, *Orient Express Placement Phils. v. NLRC,* and *Davao Contractors Development Cooperative (DACODECO) v. Pasawa,* we did not sustain the employees' dismissal for failure of the employer to apprise them of the reasonable standards they needed to comply with for their continued employment.

APPEARANCES OF COUNSEL

Jose S. Sonco and *Delia C. Vivar-Dimaandal* for petitioners.
Henedino M. Brondial for respondent.

R E S O L U T I O N

NACHURA, *J*.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals (CA) Decision[1] dated November 27, 2008 and Resolution[2] dated February 3, 2009 in CA-G.R. SP No. 104847.

The facts of the case are as follows:

Petitioner Hacienda Primera Development Corporation (petitioner Hacienda) hired respondent Michael S. Villegas as General Manager of Amorita Resort. He was hired as a probationary employee for three (3) months. The employment contract contained the following terms and conditions:

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring; *rollo*, pp. 44-57.

[2] *Id.* at 59.

1. Salary of ₱60,000.00 net per month for the first three (3) months and upon his regularization, ₱70,000.00 net per month.
2. Six (6) round trip tickets (TAG-MLA-TAG) per annum.
3. ₱2,500.00 cell phone bill allowance.
4. Fifteen (15) days vacation leave and fifteen (15) days sick leave upon permanency.
5. Pro-rated 13th month pay starting December 2006.
6. A 3-month probationary period starting January 200[7].
7. Board and lodging in the resort.
8. Medical Insurance.[3]

Respondent started working for petitioner on January 1, 2007. On March 14, 2007, he received a call from Paramount Consultancy and Management telling him to report back to Manila. There, he learned that his services were terminated. He, thus, asked for a written notice of termination, but did not receive any.[4] Hence, the complaint for illegal dismissal.

Petitioner Hacienda, on the other hand, stated that respondent was hired as probationary employee. It explained that respondent's services were terminated because he failed to qualify for regular employment. Specifically, it claimed that respondent failed to conceptualize and complete financial budgets, sales projection, room rates, website development, and marketing plan in coordination with the Sales and Marketing Manager.[5]

On November 22, 2007, Labor Arbiter (LA) Herminio V. Suelo rendered a decision[6] in favor of respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant illegally dismissed.

Accordingly, respondents are hereby ordered as follows:

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[3] *Supra* note 1, at 45.

[4] *Id.* at 45-46.

[5] *Id.* at 158.

[6] *Id.* at 124-132.

1. To reinstate complainant to his former position without loss of seniority rights and other benefits;
2. To pay complainant his backwages from the time he was dismissed on March 15, 2007, until his actual reinstatement either physically or by payroll;
3. To pay complainant moral damages in the amount of Fifty Thousand Pesos (₱50,000.00), and exemplary damages also in the amount of Fifty Thousand Pesos (₱50,000.00);
4. To pay complainant attorney's fees equivalent to ten (10) percent of the total monetary award.

The reinstatement aspect of this Decision is immediately executory pursuant to Article 223 of the Labor Code, as amended. Respondents are therefore directed to submit a report of compliance thereof before this Office within ten (10) calendar days from receipt of this Decision.

The Fiscal Examiner or the computation and examination unit of this Office is directed to compute the monetary aspect of the above-judgment awards which shall form part of this Decision.

SO ORDERED.[7]

Aggrieved, petitioner Hacienda elevated the case to the National Labor Relations Commission (NLRC), which partially granted[8] the appeal, worded in this wise:

WHEREFORE, the foregoing premises considered, the instant appeal is **PARTIALLY GRANTED**. The charge of illegal dismissal is **DISMISSED** for lack of merit.

Accordingly, the Decision is **MODIFIED** to order the respondents-appellants to pay his salary corresponding to the unexpired portion of his contract of employment (March 16-31, 2007) in the amount of ₱30,000.00.

SO ORDERED.[9]

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[7] *Id.* at 131-132.

[8] *Id.* at 154-159.

[9] *Id.* at 159.

In a Decision[10] dated November 27, 2008, the CA set aside the above NLRC decision and reinstated that of the LA. The dispositive portion of the assailed CA Decision is quoted below for easy reference:

> WHEREFORE, the instant Petition is hereby **GRANTED**. The Decision of the NLRC is hereby **SET ASIDE**. Accordingly, the Decision of the Labor Arbiter is **REINSTATED** with the **MODIFICATION** that since reinstatement is no longer possible due to strained relations between the parties, a separation pay of one month for every year of service is hereby decreed. In this connection, the instant case is hereby remanded to the Labor Arbiter for the computation of the said monetary award.
>
> SO ORDERED.[11]

Petitioner Hacienda's motion for reconsideration was denied in a Resolution[12] dated February 3, 2009. Hence, the instant petition with the following assigned errors:

> (A) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT RULED THAT RESPONDENT WAS ILLEGALLY DISMISSED;
>
> (B) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT IN REINSTATING THE DECISION OF THE LABOR ARBITER AWARDING UNLIMITED BACKWAGES BEYOND THE RESPONDENT'S PROBATIONARY EMPLOYMENT;
>
> (C) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT RULED THAT RESPONDENT IS ENTITLED TO MORAL AND EXEMPLARY DAMAGES;
>
> (D) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT RULED THAT RESPONDENT IS ENTITLED TO ATTORNEY'S FEES;

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[10] *Supra* note 1.

[11] *Id.* at 56-57.

[12] *Supra* note 2.

(E) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT ORDERED THE PAYMENT OF SEPARATION PAY; AND

(F) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT DECIDED THE PETITION OF RESPONDENT ALTHOUGH THE NLRC'S RESOLUTION DATED 22 APRIL 2008 IS ALREADY FINAL AND EXECUTORY SINCE RESPONDENT'S MOTION FOR RECONSIDERATION, CONTRARY TO THE RULES OF PROCEDURE OF THE NLRC, IS UNVERIFIED.[13]

The petition is unmeritorious.

The Labor Code and its Implementing Rules govern probationary employment.[14]

LABOR CODE

Art. 281. *Probationary Employment.*—Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

LABOR CODE, Implementing Rules of Book VI, Rule I, Section 6

Sec. 6. *Probationary employment*. There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x x x x x x x

[13] *Rollo*, p. 21.

[14] *Ramos v. Court of Appeals*, G.R. No. 170116, December 23, 2008, 575 SCRA 160, 167.

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just or authorized cause, when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

In *Magis Young Achievers' Learning Center v. Manalo,*[15] the Court described probationary employment in this wise:

A probationary employee or probationer is one who is on trial for an employer, during which the latter determines whether or not he is qualified for permanent employment. The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word *probationary,* as used to describe the period of employment, implies the purpose of the term or period, not its length.[16]

It can be gleaned from the foregoing provisions of law and jurisprudential pronouncement that there are two grounds to legally terminate a probationary employee. It may be done either: a) for a just cause; or b) when the employee fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the start of the employment.[17]

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[15] G.R. No. 178835, February 13, 2009, 579 SCRA 421.

[16] *Id.* at 431-432.

[17] *Aberdeen Court, Inc. v. Agustin, Jr.,* 495 Phil. 706, 715 (2005).

In this case, petitioner Hacienda fails to specify the reasonable standards by which respondent's alleged poor performance was evaluated, much less to prove that such standards were made known to him at the start of his employment.[18] Thus, he is deemed to have been hired from day one as a regular employee.[19] Due process dictates that an employee be apprised beforehand of the condition of his employment and of the terms of advancement therein.[20]

We quote with approval the CA's observation in this wise:

> Verily, a cursory examination of the employment contract readily shows the absence of any standard to which [respondent] should comply. Neither was there any indicia that [respondent] was ever informed of the said standards if there [were] any. What [petitioners] merely claim, as mentioned above, is that [respondent] was presumed to know the standard required of him as General Manager in charge [of] the pre-opening of the resort.[21]

In *Secon Philippines, Ltd. v. NLRC,*[22] *Orient Express Placement Phils. v. NLRC*,[23] and *Davao Contractors Development Cooperative (DACODECO) v. Pasawa,*[24] we did not sustain the employees' dismissal for failure of the employer to apprise them of the reasonable standards they needed to comply with for their continued employment.

We find no reason to depart from the above conclusion.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated November 27, 2008 and Resolution dated February 3, 2009 in CA-G.R. SP No. 104847 are *AFFIRMED*.

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[18] *Orient Express Placement Phils. v. NLRC*, 339 Phil. 449, 452 (1997).

[19] *Clarion Printing House, Inc. v. NLRC*, 500 Phil. 61, 82 (2005).

[20] *Orient Express Placement Phils. v. NLRC*, *supra*, at 453.

[21] *Supra* note 1, at 51.

[22] 377 Phil. 711 (1999).

[23] *Supra*.

[24] G.R. No. 172174, July 9, 2009, 592 SCRA 334.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 187872. April 11, 2011]

STRATEGIC ALLIANCE DEVELOPMENT CORPORATION, *petitioner, vs.* **STAR INFRASTRUCTURE DEVELOPMENT CORPORATION,** ***ET AL.*,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; THE NATURE OF THE ACTION, AS WELL AS THE COURT WHICH HAS JURISDICTION OVER IT, IS DETERMINED BASED ON THE ALLEGATIONS CONTAINED IN THE COMPLAINT, IRRESPECTIVE OF WHETHER OR NOT PLAINTIFF IS ENTITLED TO RECEIVE UPON ALL OR SOME OF THE CLAIMS ASSERTED THEREIN; RELATIONSHIP TEST AND THE NATURE OF THE CONTROVERSY TEST, APPLIED.—** Fundamental is the rule that nature of the action, as well as the court or body which has jurisdiction over it, is determined based on the allegations contained in the complaint, irrespective of whether or not plaintiff is entitled to recover upon all or some of the claims asserted therein. It has been held that only ultimate facts and not legal conclusions or evidentiary facts, which should not be alleged in the complaint in the first place, are considered for purposes of applying the test. Applying the *relationship test* and the *nature of the controversy test* already discussed in our 17 November 2010 decision, we find that STRADEC's causes of action for the nullification of the loan and pledge over its SIDC shareholdings

contracted by respondents Yujuico and Sumbilla as well as the avoidance of the notarial sale conducted by respondent Raymond M. Caraos both qualify as intra-corporate disputes. It cannot, therefore, be argued that said causes of action were misjoined with STRADEC's third and fourth causes of action for the cancellation of the transfer of its shares in SIDC's books, the invalidation of the 30 July 2005 and 20 July 2006 SIDC stockholders' meetings, attorney's fees and the costs.

2. **ID.; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; DEFINED; REQUISITES; CANNOT BE APPRECIATED WHERE THE SUBJECT ACTIONS ARE ALL CIVIL IN NATURE.—** Neither are we inclined to hospitably entertain respondents' harping over the supposed fact that Quiambao's authority to represent STRADEC — as litigated in the cases pending before the courts of Pasig City and Urdaneta City, involving the question of ownership of the controlling shares of stock of STRADEC as well as the legitimacy of the Board of Directors headed by Quiambao — pose a prejudicial question to the resolution of the dispute before Branch 2 of the Batangas City RTC. A prejudicial question is defined as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It is said to come into play when a civil action and a criminal action are both pending and there exists in the former case an issue which must be preemptively resolved before the latter case may proceed since the resolution of the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. Aimed at avoiding two conflicting decisions, a prejudicial question requires the concurrence of two essential requisites, to wit: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and, (b) the resolution of such issue determines whether or not the criminal action may proceed. From the foregoing disquisition, it is evident that a prejudicial question cannot be appreciated where, as in the case at bench, the subject actions are all civil in nature.

3. **ID.; ID.; ID.; THE COURT IN WHICH AN ACTION IS PENDING MAY HOLD THE ACTION IN ABEYANCE IN THE EXERCISE OF SOUND DISCRETION, TO ABIDE BY THE OUTCOME OF ANOTHER CASE PENDING IN**

ANOTHER COURT, ESPECIALLY WHERE THE PARTIES AND THE ISSUES ARE THE SAME; NOT APPLICABLE.— As an incident to the power inherent in every court to control the disposition of the cases on its dockets, the court in which an action is pending may, concededly, hold the action in abeyance in the exercise of sound discretion, to abide by the outcome of another case pending in another court, especially where the parties and the issues are the same. While applicable as between the actions pending before the courts of Pasig City and Urdaneta City which were supposedly instituted to determine the ownership of the controlling shares of stock of STRADEC as well as its legitimate Board of Directors, said principle cannot, however, apply to said cases *vis-à-vis* the one at bench which, at bottom, seek the nullification of the loan and pledge over said corporation's shareholdings in SIDC as well as the subsequent notarial sale thereof. Even then, we find that respondents cannot expediently argue that the defects in the impugned loan, pledge and notarial sale would be automatically discounted by a declaration from the Pasay City and Urdaneta City courts that respondents Yujuico and Sumbilla's group constitute said corporation's legitimate Board of Directors. Assuming, *arguendo*, that respondents are justified in equating such determination with due authorization for the loan and pledge over STRADEC's shares in SIDC, we find that it would not still dispose of the issue of the alleged lack of consideration for the same transactions and the fraud which supposedly attended the execution of the same.

4. **COMMERCIAL LAW; CORPORATION LAW; A CORPORATION HAS A PERSONALITY SEPARATE AND DISTINCT FROM ITS CORPORATORS AND HAS A RIGHT TO PROTECT ITS RIGHTS AND INTERESTS; PETITIONER CORPORATION IS NOT BARRED FROM FILING THE AMENDED PETITION; ISSUE ON THE AUTHORITY OF ITS PRESIDENT TO FILE THE AMENDED PETITION MUST BE THRESHED OUT BEFORE THE COURT *A QUO*.—** We have likewise gone over the Court's 29 January 2007 decision in G.R. No. 168639 and found no pronouncement therein that would bar the filing of the 31 July 2006 amended petition by STRADEC which, as a corporation with a personality separate and distinct from its corporators, has a right to protect its rights and interests over

the subject SIDC shares. Considered in this light, we find that respondents are out on a limb in asserting that the record is be bereft of any showing that Quiambao's authority to said amended petition *a quo* was granted by the legitimate successor to STRADEC's Board of Directors which was restored into office by this Court's 29 January 2007 decision in G.R. No. 168639. To a great extent, this situation is attributable to the fact that Civil Case No. 7956 was still on its preliminary stages when Branch 2 of the RTC of Batangas City issued its assailed 30 August 2006 order, withholding action on STRADEC's first and causes of action on the ground of improper venue and suspending proceedings regarding the corporation's third and fourth causes of action in view of the then pendency of G.R. No. 168639 before this Court. Given that responsive pleadings squarely questioning Quiambao's authority to represent STRADEC have yet to be filed by respondents, the matter is clearly one better threshed out before the court *a quo*, alongside such issues as the validity of the transfers of STRADEC's shares to respondents Wong and CTCII, the propriety of the recording of said transfers in SIDC's books, STRADEC's status as a stockholder of SIDC and the legality of the 30 July 2005 and 20 July 2006 SIDC stockholders' meetings.

5. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ESSENTIAL REQUISITES FOR THE ISSUANCE OF A WRIT; PRESENT.—** As an adjunct to the main action subject to the latter's outcome, on the other hand, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and, (3) that there is an urgent and paramount necessity for the writ to prevent serious damage. Concurrence of the foregoing requisites is evident from the fact that STRADEC has been deprived of its rights to its shareholdings and to participate in SIDC's corporate affairs as a consequence of the impugned loan and pledge as well as the transfer of the shares to respondent Wong and CTCII. For these reasons alone, we find that STRADEC is entitled to a writ of preliminary injunction to restrain: (a) CTCII from further exercising proprietary rights over the subject shares; (b) SIDC and its officers from

recognizing the transfer or further transfers of the same; (c) the implementation of the resolutions passed during the 20 July 2006 SIDC stockholders' special meeting; and, (d) the SEC from acting on any report submitted in respect thereto. Far from amounting to a prejudgment of the case, the restraint of said acts is merely in the service of the office of a writ of preliminary injunction, *i.e.*, the restoration of the *status quo ante* as well preservation and protection of the rights of the litigant during the pendency of the case.

6. ID.; ID.; ID.; CANNOT BE ISSUED AGAINST ACTS ALREADY *FAIT ACCOMPLI* BUT CONSUMMATED ACTS WHICH ARE CONTINUING IN NATURE MAY STILL BE ENJOINED BY THE COURTS.— In view of CTCII's acquisition of STRADEC's shares as well as the changes in SIDC's corporate structure which were effected as a consequence thereof, respondents also argue that the writ of preliminary injunction granted in the decision sought to be reconsidered is directed against acts already consummated. Although the general rule is to the effect that a writ of preliminary injunction cannot be issued against acts already *fait accompli*, it has been held, however, that consummated acts which are continuing in nature may still be enjoined by the courts. The propriety of the grant of the provisional injunctive writ sought by STRADEC having been established, we find that approval of said corporation's *Motion to Admit and Approve Preliminary Injunction Bond* is in order. Contrary to respondents' harping about the lack of showing thereof in the record, Quiambao's authority to file said motion is implicit in the 21 May 2009 Directors' Certification attached to STRADEC's petition for review on *certiorari*.

7. ID.; ID.; ID.; DISSOLUTION THEREOF, TWO CONDITIONS.— [W]e find no merit in CTCII's objections to the writ of preliminary injunction and offer to file a counterbond in the sum of ₱20,000,000.00, on the ground that the ₱10,000,000.00 injunction bond STRADEC has been required to post is grossly insufficient to cover the grave and irreparable damage which would result from the issuance of said writ. Pursuant to Section 6, Rule 58 of the *1997 Rules of Civil Procedure*, "a preliminary injunction may be dissolved if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may

be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court on condition that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. Two conditions must concur: first, the court in the exercise of its discretion, finds that the continuance of the injunction would cause great damage to the defendant, while the plaintiff can be fully compensated for such damages as he may suffer; second, the defendant files a counterbond."

8. **ID.; ID.; ID.; THE MERE OFFER OF A COUNTERBOND DOES NOT SUFFICE TO WARRANT THE DISSOLUTION OF THE PRELIMINARY WRIT OF INJUNCTION ISSUED TO STOP AN ILLEGAL ACT.—** Aside from the fact that the amount of injunction bond is equivalent to the sum of the supposed loan for which STRADEC's shares were pledged by respondents Yujuico and Sumbilla, we find that the projected damage to SIDC's construction, operation and maintenance of the STAR toll road is, to say the least, speculative. Even when reckoned from the commencement of the action *a quo* on 17 July 2006, the damage STRADEC suffered and continues to suffer as a consequence of the impugned transactions is, in contrast, clearly beyond monetary recompense as it not only amounts to a divesture of its ownership over said shares but, more importantly, translates into a denial of its rights to elect SIDC's officers, to participate in its corporate affairs and, as a major stockholder, to determine the course of its business dealings, among other matters. Moreover, the mere offer of a counterbond does not suffice to warrant the dissolution of the preliminary writ of injunction issued to stop an unauthorized act. A contrary holding would open the gates to the use of the counterbond as a vehicle of the commission or continuance of an unauthorized or illegal act which the injunction precisely is intended to prevent.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioner.
Aspiras & Aspiras Law Offices for Star Infrastructure Dev't. Corp.

Fortun Narvasa Salazar Law Office for Robert Wong.

Tabalingcos & Associates for B.S. Tabalingcos & R. Caraos.

Castillo Laman Tan Pantaleon & San Jose Law Offices for A.Z. Yujuico & B.C. Sumbilla.

Tan Concepcion Lagmay & Que for Cypress Tree Capital Investments, Inc. & C. Laureta.

R E S O L U T I O N

PEREZ, *J.*:

For resolution by the Court are the following motions and incidents filed by the parties, to wit:

1. *Initial Motion for Reconsideration of the Grant of the Application for Writ of Preliminary Injunction (With Offer to File Counterbond)*[1] and *Supplemental Motion for Reconsideration* of the 17 November 2010 decision, filed by respondent Cypress Tree Capital Investment, Inc. (CTCII);[2]

2. *Motions for Reconsideration* of said 17 November 2010 decision filed by respondents Aderito Z. Yujuico and Bonifacio C. Sumbilla,[3] Robert L. Wong,[4] and Star Infrastructure Development Corporation (SIDC);[5]

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[1] *Rollo*, pp. 1217-1242, CTCII's *Initial Motion for Reconsideration of the Grant of the Application for Writ of Preliminary Injunction (With Offer to File Counterbond)* dated 10 December 2010.

[2] *Id.* at 1298-1313, CTCII's *Supplemental Motion for Reconsideration,* dated 22 December 2010.

[3] *Id.* at 1243-1257, Yujuico and Sumbilla's *Motion for Reconsideration* dated 17 December 2010.

[4] *Id.* at 1261-1276, Wong's *Motion for Reconsideration* dated 15 December 2010.

[5] *Id.* at 1314-1343, SIDC's *Motion for Reconsideration* dated 17 December 2010.

3. *Motion to Admit and Approve Preliminary Injunction Bond* filed by petitioner Strategic Alliance Development Corporation (STRADEC);[6]

4. *Oppositions to STRADEC's Motion to Admit and Approve Preliminary Injunction Bond* filed by respondents Yujuico and Sumbilla[7] as well as CTCII and respondent Cynthia M. Laureta;[8]

5. *Manifestation*[9] and *Reply*[10] filed by STRADEC and *Rejoinder* filed by respondents Yujuico and Sumbilla;[11] and

6. *Comment (*on CTCII's Initial Motion for Reconsideration of the Grant of the Application for Writ of Preliminary Injunction (With Offer to File Counterbond*)*[12] and *Consolidated Comment* (on Respondents' Motion for Reconsideration)[13] filed by STRADEC.

In their motions for reconsideration of the Court's 17 November 2010 decision, respondents essentially argue that the issue of Ceasar Quiambao's authority to represent STRADEC is a prejudicial question to the resolution of the dispute before the court *a quo*; that a declaration that respondent Yujuico and Sumbilla's group constitutes STRADEC's legitimate Board of Directors would not only discount Quiambao's authority to

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[6] *Id.* at 1277-1279, STRADEC's *Motion to Admit and Approve Preliminary Injunction Bond* dated 23 December 2010.

[7] *Id.* at 1346-1352, Yujuico and Sumbilla's *Opposition to Motion to Admit and Approve Preliminary Injunction Bond* dated 6 January 2011.

[8] *Id.* at 1355-1365, CTCII and Laureta's *Opposition to Motion to Admit and Approve Preliminary Injunction Bond* dated 28 January 2011.

[9] *Id.* at 1366-1369, SIDC's *Manifestation* dated 28 January 2011.

[10] *Id.* at 1370-1382, STRADEC's *Reply* dated 4 February 2011.

[11] *Id.* at 1403-1416, Yujuico and Sumbilla's *Rejoinder* dated 21 February 2011.

[12] STRADEC's *Comment* dated 4 March 2011.

[13] STRADEC's *Consolidated Comment* dated 11 March 2011.

represent said corporation but would also validate the authority said respondents were given to execute the 8 October 2004 pledge of said corporation's SIDC shares; that the record is bereft of any showing that the Board of Directors who authorized Quiambao to file the 31 July 2006 amended petition before Branch 2 of the Regional Trial Court (RTC) of Batangas City was the legitimate successor of STRADEC's Board of Directors which was restored into office by this Court's 29 January 2007 decision in G.R. No. 168639; that there was misjoinder of causes of action in said amended complaint which incorporated claims both civil and intra-corporate in nature; that STRADEC has no clear and unmistakable right as would entitle it to a writ of preliminary injunction which, at any rate, cannot be directed against acts which had already been accomplished or consummated; and, that the preliminary injunction issued in the premises amounted a prejudgment of the case.[14]

In compliance with the 17 November 2010 decision sought be reconsidered, STRADEC, on the other hand, seeks the admission and approval of the preliminary injunction bond issued by the Empire Insurance Company in the sum of ₱10,000,000.00.[15] On the ground, however, that grave and irreparable damage will be wrought by the issuance of the writ of preliminary injunction in these premises, CTCII's motion for reconsideration of the grant of said writ is accompanied by an offer to post a counterbond in the sum of ₱20,000,000.00. For this purpose, CTCII calls our attention to the supposed fact, among other matters, that it is currently the principal shareholder of SIDC which, as a public utility company, holds the concession for the construction, operation and maintenance of the STAR toll road; that SIDC is scheduled to expand Stage II, Phase 2 of the STAR toll road with the construction of two additional new lanes at an estimated cost of ₱2,000,000,000.00; that if it is prevented from exercising proprietary rights over the subject shares and SIDC is inhibited from implementing the 20 July 2006 stockholders' resolution

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[14] *Rollo*, pp. 1298-1343.

[15] *Id.* at 1277-1279.

increasing its authorized capital stock, CTCII will be unable to infuse the equity participation commonly required for bank loans; and, that since the security for said loans consisting of SIDC's assets requires the vote of stockholders owning/controlling 2/3 of SIDC's outstanding capital stock, the writ of preliminary injunction would cause grave and irreparable damage which cannot be indemnified by the injunction bond to be posted by STRADEC.[16] In support of the foregoing arguments, CTCII submitted an affidavit of merit executed by its President, Elizabeth Lee.[17]

In their opposition to STRADEC's motion to admit and approve preliminary injunction bond, respondents Yujuico and Sumbilla, in turn, question Quiambao's authority to file and submit said bond. Calling attention to the fact that the motion did not include a board resolution authorizing Quiambao to file the same for and in behalf of STRADEC, respondents Yujuico and Quiambao once again argue that there is no showing in the record that Quiambao was so authorized by a legitimate Board of Directors which succeeded the one restored in office by the 29 January 2007 decision in G.R. No. 168639.[18] The foregoing arguments having been adopted in the 28 January 2011 manifestation filed by SIDC,[19] STRADEC filed its reply, contending that the decision in G.R. No. 168639 had reference only to the election of its Board of Directors for the term 2004-2005; that since then, the annual meetings of its stockholders had resulted in the consistent re-election of Quiambao as its Corporate President; that said subsequent elections were recognized in the 2 February 2009 decision rendered by Branch 155 of the Pasig City RTC in SCA No. 3034-PSG, entitled "*Citra Metro Manila Tollways Corporation* [CMMTC] *vs. Strategic Alliance Development Corporation, et al.*"; and, that the decision was effectively affirmed in G.R. No. 188864 when

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[16] *Id.* at 1217-1242; 1355-1365.

[17] *Id.* at 1237-1239.

[18] *Id.* at 1346-1352.

[19] *Id.* at 1366-1369.

this Court denied the petition for review on *certiorari* filed by respondents Yujuico and Sumbilla.[20] In their reply, however, the latter argue that said decision in SCA No. 3034 only referred to the validity of the proxies issued by STRADEC for the stockholders meetings of CMMTC for the years 2005 and 2006.[21]

In its comment to CTCII's *Initial Motion for Reconsideration of the Grant of the Application for Writ of Preliminary Injunction (With Offer to File Counterbond)*, STRADEC additionally underscores the fact, among other matters, that as its duly elected Corporate President, Quiambao has been duly authorized to file its 31 July 2006 amended petition *a quo* and to obtain the requisite surety bond for the writ of preliminary injunction sought in connection with its petition for review on *certiorari* from the Court of Appeals' (CA) 22 December 2008 decision in CA-G.R. No. 96945; that CTCII's continuing violations of STRADEC's rights over its SIDC shares justify the issuance of the writ of preliminary injunction to which it is entitled as owner of said shares; and, that the grave and irreparable damage pleaded by CTCII is attributable to its illegal acquisition of the subject shares and its continued usurpation of STRADEC's rights could only result to instability in the conduct of SIDC's business.[22] Reiterating the foregoing arguments in its consolidated comment to respondents' motions for reconsideration, STRADEC maintains that the arguments presently raised by respondents had already been squarely passed upon in the decision sought to be reconsidered; and, that the suspension of the proceedings regarding its third and fourth causes of action is not justified by the pendency of other intra-corporate disputes between STRADEC's corporators.[23]

We find respondents' motions for reconsideration bereft of merit.

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[20] *Id.* at 1370-1382.

[21] *Id.* at 1403-1416.

[22] *Supra* note 12.

[23] *Supra* note 13.

Having already discussed the matter extensively in the decision sought to be reconsidered, we no longer find any reason to go into great detail in discussing the reasons why the first and second causes of action pleaded in STRADEC's 31 July 2006 amended complaint qualify as intra-corporate disputes cognizable by Branch 2 of the RTC of Batangas City, sitting as a Special Commercial Court (SCC). Fundamental is the rule that nature of the action, as well as the court or body which has jurisdiction over it, is determined based on the allegations contained in the complaint, irrespective of whether or not plaintiff is entitled to recover upon all or some of the claims asserted therein.[24] It has been held that only ultimate facts and not legal conclusions or evidentiary facts, which should not be alleged in the complaint in the first place, are considered for purposes of applying the test.[25] Applying the *relationship test* and the *nature of the controversy test* already discussed in our 17 November 2010 decision, we find that STRADEC's causes of action for the nullification of the loan and pledge over its SIDC shareholdings contracted by respondents Yujuico and Sumbilla as well as the avoidance of the notarial sale conducted by respondent Raymond M. Caraos both qualify as intra-corporate disputes.[26] It cannot, therefore, be argued that said causes of action were misjoined with STRADEC's third and fourth causes of action for the cancellation of the transfer of its shares in SIDEC's books, the invalidation of the 30 July 2005 and 20 July 2006 SIDC stockholders' meetings, attorney's fees and the costs.

Neither are we inclined to hospitably entertain respondents' harping over the supposed fact that Quiambao's authority to represent STRADEC — as litigated in the cases pending before the courts of Pasig City and Urdaneta City, involving the question of ownership of the controlling shares of stock of STRADEC as well as the legitimacy of the Board of Directors headed by

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[24] *Metro Properties, Inc. v. Magallanes Village Association, Inc.,* 510 Phil. 101, 107 (2005).

[25] *Abacan, Jr. v. Northwestern University,* 495 Phil. 123, 133 (2005).

[26] *Rollo*, pp. 1199-1203, Decision dated 17 November 2010.

Quiambao — pose a prejudicial question to the resolution of the dispute before Branch 2 of the Batangas City RTC. A prejudicial question is defined as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal.[27] It is said to come into play when a civil action and a criminal action are both pending and there exists in the former case an issue which must be preemptively resolved before the latter case may proceed since the resolution of the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. Aimed at avoiding two conflicting decisions,[28] a prejudicial question requires the concurrence of two essential requisites, to wit: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and, (b) the resolution of such issue determines whether or not the criminal action may proceed.[29] From the foregoing disquisition, it is evident that a prejudicial question cannot be appreciated where, as in the case at bench, the subject actions are all civil in nature.[30]

As an incident to the power inherent in every court to control the disposition of the cases on its dockets, the court in which an action is pending may, concededly, hold the action in abeyance in the exercise of sound discretion, to abide by the outcome of another case pending in another court,[31] especially where the parties and the issues are the same.[32] While applicable as between the actions pending before the courts of Pasig City and Urdaneta City which were supposedly instituted to determine the ownership

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[27] *People of the Philippines v. Cosing, Jr.,* 443 Phil. 454, 459 (2003).

[28] *Sy Tiong Shiou v. Sy Chim,* G.R. Nos. 174168 and 179438, 30 March 2009, 582 SCRA 517, 529.

[29] *Ching v. Court of Appeals*, 387 Phil. 28, 39 (2000).

[30] *Carlos v. Court of Appeals,* 335 Phil. 490, 499 (1997).

[31] *SM Systems Corporation v. Camerino*, G.R. No. 178591, 26 July 2010, 625 SCRA 482, 493.

[32] *Abacan, Jr. v. Northwestern University*, 495 Phil. 123, 138 (2005) citing *Quiambao v. Osorio*, 16 March 1988, 158 SCRA 674.

of the controlling shares of stock of STRADEC as well as its legitimate Board of Directors, said principle cannot, however, apply to said cases *vis-à-vis* the one at bench which, at bottom, seek the nullification of the loan and pledge over said corporation's shareholdings in SIDC as well as the subsequent notarial sale thereof. Even then, we find that respondents cannot expediently argue that the defects in the impugned loan, pledge and notarial sale would be automatically discounted by a declaration from the Pasay City and Urdaneta City courts that respondents Yujuico and Sumbilla's group constitute said corporation's legitimate Board of Directors. Assuming, *arguendo*, that respondents are justified in equating such determination with due authorization for the loan and pledge over STRADEC's shares in SIDC, we find that it would not still dispose of the issue of the alleged lack of consideration for the same transactions and the fraud which supposedly attended the execution of the same.

We have likewise gone over the Court's 29 January 2007 decision in G.R. No. 168639 and found no pronouncement therein that would bar the filing of the 31 July 2006 amended petition by STRADEC which, as a corporation with a personality separate and distinct from its corporators,[33] has a right to protect its rights and interests over the subject SIDC shares. Considered in this light, we find that respondents are out on a limb in asserting that the record is be bereft of any showing that Quiambao's authority to said amended petition *a quo* was granted by the legitimate successor to STRADEC's Board of Directors which was restored into office by this Court's 29 January 2007 decision in G.R. No. 168639. To a great extent, this situation is attributable to the fact that Civil Case No. 7956 was still on its preliminary stages when Branch 2 of the RTC of Batangas City issued its assailed 30 August 2006 order, withholding action on STRADEC's first and causes of action on the ground of improper venue and suspending proceedings regarding the corporation's third and fourth causes of action in view of the then pendency of G.R. No. 168639 before this Court. Given that responsive pleadings

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[33] *PNB v. Andrada Electric & Engineering Company*, 430 Phil. 882, 894 (2002).

squarely questioning Quiambao's authority to represent STRADEC have yet to be filed by respondents, the matter is clearly one better threshed out before the court *a quo*, alongside such issues as the validity of the transfers of STRADEC's shares to respondents Wong and CTCII, the propriety of the recording of said transfers in SIDC's books, STRADEC's status as a stockholder of SIDC and the legality of the 30 July 2005 and 20 July 2006 SIDC stockholders' meetings.

As an adjunct to the main action subject to the latter's outcome,[34] on the other hand, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and, (3) that there is an urgent and paramount necessity for the writ to prevent serious damage.[35] Concurrence of the foregoing requisites is evident from the fact that STRADEC has been deprived of its rights to its shareholdings and to participate in SIDC's corporate affairs as a consequence of the impugned loan and pledge as well as the transfer of the shares to respondent Wong and CTCII. For these reasons alone, we find that STRADEC is entitled to a writ of preliminary injunction to restrain: (a) CTCII from further exercising proprietary rights over the subject shares; (b) SIDC and its officers from recognizing the transfer or further transfers of the same; (c) the implementation of the resolutions passed during the 20 July 2006 SIDC stockholders' special meeting; and, (d) the SEC from acting on any report submitted in respect thereto. Far from amounting to a prejudgment of the case, the restraint of said acts is merely in the service of the office of a writ of preliminary injunction, *i.e.*, the restoration of the *status quo ante* as well preservation and protection of the rights of the litigant during the pendency of the case.[36]

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[34] *Bustamante v. Court of Appeals*, 430 Phil. 797, 808 (2002).

[35] *Samahan ng Masang Pilipino sa Makati, Inc. (SMPMI) v. Bases Conversion Development Authority (BCDA),* G.R. No. 142255, 26 January 2007, 513 SCRA 88, 98.

[36] *Supra* note 34.

In view of CTCII's acquisition of STRADEC's shares as well as the changes in SIDC's corporate structure which were effected as a consequence thereof, respondents also argue that the writ of preliminary injunction granted in the decision sought to be reconsidered is directed against acts already consummated. Although the general rule is to the effect that a writ of preliminary injunction cannot be issued against acts already *fait accompli*,[37] it has been held, however, that consummated acts which are continuing in nature may still be enjoined by the courts.[38] The propriety of the grant of the provisional injunctive writ sought by STRADEC having been established, we find that approval of said corporation's *Motion to Admit and Approve Preliminary Injunction Bond* is in order. Contrary to respondents' harping about the lack of showing thereof in the record, Quiambao's authority to file said motion is implicit in the following 21 May 2009 Directors' Certification attached to STRADEC's petition for review on *certiorari*, to wit:

"WE, as the incumbent members of the Board of Directors of the STRATEGIC ALLIANCE DEVELOPMENT CORPORATION (the "Corporation"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Quezon Boulevard, Poblacion Sur, Bayambang, Pangasinan, Philippines, do hereby certify that the following resolutions were approved by the Board, to wit:

> 'RESOLVED, as it is hereby resolved that the Corporation shall file a *Petition for Review on Certiorari* under Rule 45 of the Rules of Court to assail the *Decision* dated 22 December 2008 and *Resolution* dated 30 April 2009 in CA-G.R. SP No. 96945, entitled *'Strategic Alliance Development Corporation vs. RTC of Batangas City (Branch 2), Star Infrastructure Development Corporation, et al.,"* with an application for the issuance of a temporary restraining order and/or writ of injunction, if deemed necessary.

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[37] *Philippine National Bank v. Court of Appeals*, 353 Phil. 473, 479 (1998).

[38] *Reyes-Tabujara v. Court of Appeals*, G.R. No. 172813, 20 July 2006, 495 SCRA 844, 857 citing Regalado, *Remedial Law Compendium*, Vol. I, p. 647.

WHEREFORE, BE IT RESOLVED, as it is hereby resolved that the Corporation's President, CEZAR T. QUIAMBAO, shall be authorized, as he is hereby authorized: to cause the filing of the *Petition* before the Supreme Court; to verify the pleadings; and to execute any affidavit in support thereof, hereby giving and granting to CEZAR T. QUIAMBAO full power to carry into effect the foregoing, including the authority to appear on the Corporation's behalf, as fully to all intents and purposes as the Corporation might or could lawfully do if personally present, and hereby ratifying and confirming all that CEZAR T. QUIAMBAO, or his representatives shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this May 21, 2009 at Quezon City, Philippines.

(Sgd.) DEMETRIO G. DEMETRIA
Chairman of the Board

(Sgd.) ANTHONY K. QUIAMBAO
Vice Chairman

CEZAR T. QUIAMBAO

(Out of the Country)
JULIUS K. QUIAMBAO

(Sgd.) GIOVANNI T. CASANOVA
Director"[39]

Viewed in the light of the foregoing considerations, we find no merit in CTCII's objections to the writ of preliminary injunction and offer to file a counterbond in the sum of ₱20,000,000.00, on the ground that the ₱10,000,000.00 injunction bond STRADEC has been required to post is grossly insufficient to cover the grave and irreparable damage which would result from the issuance of said writ. Pursuant to Section 6, Rule 58 of the *1997 Rules of Civil Procedure*,[40] "a preliminary injunction may be dissolved

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[39] *Rollo*, pp. 58-59.

[40] "Section 6. *Grounds for objection to, or for motion of dissolution of, injunction or restraining order*. — The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also on affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although

if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court on condition that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. Two conditions must concur: first, the court in the exercise of its discretion, finds that the continuance of the injunction would cause great damage to the defendant, while the plaintiff can be fully compensated for such damages as he may suffer; second, the defendant files a counterbond."[41]

Aside from the fact that the amount of injunction bond is equivalent to the sum of the supposed loan for which STRADEC's shares were pledged by respondents Yujuico and Sumbilla, we find that the projected damage to SIDC's construction, operation and maintenance of the STAR toll road is, to say the least, speculative. Even when reckoned from the commencement of the action *a quo* on 17 July 2006, the damage STRADEC suffered and continues to suffer as a consequence of the impugned transactions is, in contrast, clearly beyond monetary recompense as it not only amounts to a divesture of its ownership over said shares but, more importantly, translates into a denial of its rights to elect SIDC's officers, to participate in its corporate affairs and, as a major stockholder, to determine the course of its business dealings, among other matters. Moreover, the mere offer of a counterbond does not suffice to warrant the dissolution

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the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

[41] *Yap v. International Exchange Bank,* G.R. No. 175145, 28 March 2008, 550 SCRA 395, 410.

of the preliminary writ of injunction[42] issued to stop an unauthorized act. A contrary holding would open the gates to the use of the counterbond as a vehicle of the commission or continuance of an unauthorized or illegal act which the injunction precisely is intended to prevent.[43]

WHEREFORE, premises considered, respondents' motions for reconsideration and CTCII's offer to file a counter bond are *DENIED* for lack of merit. Accordingly, STRADEC's motion to admit and approve injunction bond is *GRANTED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190660. April 11, 2011]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **COURT OF APPEALS and ELIZABETH DIAZ, represented by FRANCISCA P. DE GUZMAN as Attorney-in-Fact,** *respondents.*

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[*] Additional member in lieu of Associate Justice Mariano C. Del Castillo per Special Order No. 913 dated 02 November 2010.

[42] *Dela Cruz v. Hon. Judge Tan Torres and Tiongco*, 107 Phil. 1163, 1168 (1960).

[43] *Director of the Bureau of Telecommunications v. Hon. Jose A. Aligaen,* G.R. No. L-31135, 29 May 1970, 33 SCRA 368, 386.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); THE DECISIONS OF THE REGIONAL TRIAL COURTS SITTING AS SPECIAL AGRARIAN COURTS MAY BE ASSAILED BY WAY OF A PETITION FOR REVIEW UNDER RULE 42 OF THE RULES OF COURT AND NOT THROUGH AN ORDINARY APPEAL UNDER RULE 41; CASE OF *LAND BANK OF THE PHILIPPINES V. DE LEON* (G.R. NO. 143275, SEPTEMBER 10, 2002), CITED.—** Indeed, following *Land Bank of the Philippines v. De Leon*, the proper mode of appeal from decisions of Regional Trial Courts sitting as SACs is by petition for review under Rule 42 of the Rules of Court and not through an ordinary appeal under Rule 41. The Court, in the immediately cited case of *Land Bank*, observing that "before the instant case reached us, Land Bank of the Philippines had no authoritative guideline on how to appeal decisions of SACs considering the seemingly conflicting provisions of Sections 60 and 61 of RA 6657," held that "Sec. 60 of RA 6657 clearly and categorically states that the said mode of appeal (petition for review) should be adopted." x x x. [T]he failure to mention Special Agrarian Courts in Section 1 of Rule 43 of the Revised Rules of Civil Procedure cannot be construed to mean that a petition for review is not permissible for decisions of the said special courts. In fact, the said Rule is not relevant to determine whether a petition for review is the proper mode of appeal from decisions of Regional Trial Courts in agrarian cases, that is, why they act as Special Agrarian Courts. Section 1 of Rule 43 of the 1997 Revised Rules of Civil Procedure merely mentions the Court of Tax Appeals and the other different quasi-judicial agencies *without exclusivity in its phraseology*. Such omission cannot be construed to justify the contention that a petition for review is prohibited for decisions on special agrarian cases inasmuch as the category is for quasi-judicial agencies and tax courts to which the Regional Trial Courts do not properly belong. Although Supreme Court of Circular No. 1-91 (precursor to Rule 43 of the Revised Rules of Civil Procedure) included the decisions of Special Agrarian Courts in the enumeration requiring petition for review, its non-inclusion later on in Rule 43 merely signifies that it was inappropriately classified

as a quasi-judicial agencies. ***What is indisputable is that Section 60 expressly regards a petition for review as the proper way of appealing decisions of agrarian courts. So far, there is no rule prescribed by this Court expressly disallowing the said procedure.*** x x x

2. ID.; ID.; ID.; RATIONALE.— The adoption of a petition for review as the mode of appeal is justified in order to "hasten" the resolution of cases involving issues on just compensation of expropriated lands under RA 6657. Thus the Court, in the *Land Bank* case, pronounced: **The reason why it is permissible to adopt a petition for review when appealing cases decided by the Special Agrarian Courts in eminent domain case is the <u>need for absolute dispatch</u> in the determination of just compensation.** Just compensation means not only paying the correct amount but also paying for the land *within a reasonable time* from its acquisition. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. **Such objective is more in <u>keeping with the nature of a petition for review</u>.** Unlike an ordinary appeal, a petition for review dispenses with the filing of a notice of appeal or completion of records as requisites before any pleading is submitted. **A petition for review <u>*hastens* the award of fair recompense</u> to deprived landowners for the government-acquired property, an end not foreseeable in an ordinary appeal.** . . .

3. REMEDIAL LAW; APPEALS; RESORT TO WRONG MODE OF APPEAL WILL RENDER THE JUDGMENT FINAL AND EXECUTORY.— Following then the same *Land Bank* case, resort by Elizabeth to a wrong mode of appeal was fatal to her cause as it resulted in rendering the decision appealed from final and executory. Her notice of appeal did not, it bears emphasis, stop the running of the reglementary period to file a petition for review. **Although appeal is an essential part of our judicial process**, it has been held, time and again, that **the right thereto is not a natural right or a part of due process but is merely a statutory privilege**. Thus, **the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also**

> **jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same**. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, **the judgment of courts** and the award of quasi-judicial agencies **must become final at some definite date** fixed by law.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Vicente D. Millora for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Private respondent Elizabeth P. Diaz (Elizabeth) was the registered owner of a parcel of agricultural land measuring approximately 15 hectares, situated in San Ricardo, Talavera, Nueva Ecija and covered by Transfer Certificate of Title (TCT) No. 197132. Ten hectares of the land were expropriated by the Department of Agrarian Reform (DAR) under Presidential Decree No. 27 and Executive Order No. 228.

The DAR valued the expropriated land (the land) at ₱54,880.59 plus increment of ₱143,041.59 or a total of ₱197,922.18. Not satisfied with the valuation, Elizabeth, through her attorney-in-fact Francisca P. De Guzman (Francisca), filed a complaint[1] on November 28, 2001 against the Land Bank of the Philippines (Land Bank) and the DAR before the Regional Trial Court of Guimba, Nueva Ecija, Branch 33, acting as a Special Agrarian Court (SAC). The complaint, docketed as Special Agrarian

[1] Records, pp. 1-11.

Case No. 1194-G, prayed that just compensation be fixed at ₱350,000 per hectare or a total of ₱5,250.000.

Upon Elizabeth's motion, three Commissioners were appointed to determine the just compensation for the land.

By Decision of June 21, 2006,[2] the SAC, adopted the DAR's valuation on the basis of average gross production and fixed the just compensation plus increment at ₱19,107.235 per hectare or a total of ₱197,922.29. It held that given the formula used in *Gabatin v. LBP*,[3] the Commissioner's Report and the fair market or assessed value of the land can not be considered in the valuation.

Elizabeth's motion for reconsideration was denied by Order dated August 31, 2006,[4] hence, she elevated the case to the Court of Appeals.[5]

Land Bank and the DAR failed to file their appellees' brief. During the pendency of the appeal, Land Bank filed a Motion for Leave to Admit Defendant-Appellee['s] Motion to Dismiss Appeal,[6] maintaining that the appeal should be dismissed because an ordinary appeal is the wrong remedy, the proper mode being by way of a petition for review, citing Section 60 of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law. Hence, Land Bank concluded that the appellate court had no jurisdiction over the case, the SAC decision having attained finality following *Land Bank of the Philippines v. De Leon*[7] which held that failure of a party to file the proper remedy within fifteen (15) days from receipt of notice of the assailed decision renders it final.

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[2] *Id.* at 240-244. Penned by Judge Ismael P. Casabar.

[3] G.R. No. 148223, November 25, 2004.

[4] Records, pp. 257-258.

[5] *Id.* at 260-262.

[6] *Rollo*, pp. 131-135.

[7] G.R. No. 143275, September 10, 2002, 388 SCRA 537.

By Resolution[8] of June 2, 2009, the appellate court denied Land Bank's motion to dismiss. It faulted Land Bank for not filing an appellee's brief as directed, and for filing the motion to dismiss the appeal after the lapse of 157 days from the last day for filing the brief.

Hence, the present petition for review on *certiorari*,[9] Land Bank maintaining that the SAC Decision had become final and executory and, therefore, the appellate court never acquired jurisdiction over the appeal filed by Elizabeth, a wrong mode of appeal.

Additionally, Land Bank ascribes bad faith on the part of Elizabeth for, instead of sending a copy of her motion for reconsideration before the SAC and her subsequent Notice of Appeal to Land Bank's counsel of record Atty. Graciela L. Gutierrez at her address at the Land Bank Field Office in Cabanatuan City, Elizabeth sent them to the Land Bank's main office in Malate, Manila where, it points out, the lawyers neither have control nor possession of the records of the case.

In view of the filing of the present petition, action on Elizabeth's appeal was held in abeyance by the appellate court per Resolution dated June 7, 2010.[10]

The petition is meritorious.

Indeed, following *Land Bank of the Philippines v. De Leon*,[11] the proper mode of appeal from decisions of Regional Trial Courts sitting as SACs is by petition for review under Rule 42 of the Rules of Court and not through an ordinary appeal under Rule 41. The Court, in the immediately cited case of *Land Bank*, observing that "before the instant case reached us, Land Bank of the Philippines had no authoritative guideline on how to appeal decisions of SACs considering the seemingly

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[8] CA *rollo,* pp. 178-181.

[9] *Id.* at 3-46.

[10] *Id.* at 363.

[11] *Supra* note 7.

conflicting provisions of Sections 60 and 61 of RA 6657," held that "Sec. 60 of RA 6657[12] clearly and categorically states that the said mode of appeal (petition for review) should be adopted."

First, there is no conflict between Section[s] 60 and 61 of RA 6657 inasmuch as the Rules of Court do not at all prescribe the procedure for ordinary appeals as the proper mode of appeal for decisions of Special Agrarian Courts. Section 61 in fact makes no more than a general reference to the Rules of Court and does not even mention the procedure for ordinary appeals in Section 2, Rule 41 of the 1997 Revised Rules of Civil Procedure as the appropriate method of elevating to the Court of Appeals decisions of Special method of elevating to the Court of Appeals decisions of Special Agrarian Courts in eminent domain cases.

Second, the failure to mention Special Agrarian Courts in Section 1 of Rule 43 of the Revised Rules of Civil Procedure cannot be construed to mean that a petition for review is not permissible for decisions of the said special courts. In fact, the said Rule is not relevant to determine whether a petition for review is the proper mode of appeal from decisions of Regional Trial Courts in agrarian cases, that is, why they act as Special Agrarian Courts. Section 1 of Rule 43 of the 1997 Revised Rules of Civil Procedure merely mentions the Court of Tax Appeals and the other different quasi-judicial agencies *without exclusivity in its phraseology*. Such omission cannot be construed to justify the contention that a petition for review is prohibited for decisions on special agrarian cases inasmuch as the category is for quasi-judicial agencies and tax courts to which the Regional Trial Courts do not properly belong. Although Supreme Court of Circular No. 1-91 (precursor to Rule 43 of the Revised Rules of Civil Procedure) included the decisions of Special Agrarian Courts in the enumeration requiring petition for review, its non-inclusion later on in Rule 43 merely signifies that it was inappropriately classified as a quasi-judicial agencies.

What is indisputable is that Section 60 expressly regards a petition for review as the proper way of appealing decisions of

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[12] "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES."

agrarian courts. So far, there is no rule prescribed by this Court expressly disallowing the said procedure.

Third, far from being in conflict, Section 61 of RA 6657 can easily be harmonized with Section 60. The reference to the Rules of Court means that the specific rules for petitions for review in the Rules of Court and other relevant procedures in appeals filed before the Court of Appeals shall be followed in appealed decisions of Special Agrarian Courts. Considering that RA 6657 cannot and does not provide the details on how the petition for review shall be conducted, a suppletory application of the pertinent provisions of the Rules of Court is necessary. In fact, Section 61 uses the word "review" to designate the mode by which the appeal is to be effected. **The reference therefore by Section 61 to the Rules of Court only means that the procedure under Rule 42 for petitions for review is to be followed for appeals in agrarian cases**.[13] (italics in the original; emphasis and underscoring supplied)

The adoption of a petition for review as the mode of appeal is justified in order to "hasten" the resolution of cases involving issues on just compensation of expropriated lands under RA 6657. Thus the Court, still in the immediately cited *Land Bank* case, pronounced:

The reason why it is permissible to adopt a petition for review when appealing cases decided by the Special Agrarian Courts in eminent domain case is the need for absolute dispatch in the determination of just compensation. Just compensation means not only paying the correct amount but also paying for the land *within a reasonable time* from its acquisition. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. **Such objective is more in keeping with the nature of a petition for review.**

Unlike an ordinary appeal, a petition for review dispenses with the filing of a notice of appeal or completion of records as requisites before any pleading is submitted. **A petition for review *hastens* the award of fair recompense to deprived landowners for the**

[13] 388 SCRA 537, 544-545.

government-acquired property, an end not foreseeable in an ordinary appeal. . . .[14] (Italics in the original; emphasis and underscoring supplied)

Following then the same *Land Bank* case, resort by Elizabeth to a wrong mode of appeal was fatal to her cause as it resulted in rendering the decision appealed from final and executory. Her notice of appeal did not, it bears emphasis, stop the running of the reglementary period to file a petition for review.

Although appeal is an essential part of our judicial process, it has been held, time and again, that **the right thereto is not a natural right or a part of due process but is merely a statutory privilege**. Thus, **the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and** **failure of a party to conform to the rules regarding appeal will render the judgment final and executory**. **Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same**. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, **the judgment of courts** and the award of quasi-judicial agencies **must become final at some definite date** fixed by law.[15] (emphasis and underscoring supplied)

WHEREFORE, the petition is *GRANTED*. The Resolution of the Court of Appeals dated June 2, 2009 is *SET ASIDE*.

The Decision dated June 21, 2006 of the Regional Trial Court of Guimba, Nueva Ecija, Branch 33 sitting as a Special Agrarian Court in Agr. Case No. 1194-G is deemed final and executory.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[14] *Id.* at 546.

[15] *Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co., et al.,* G.R. No. 143275, 399 SCRA 376, 385.

THIRD DIVISION

[G.R. No. 191008. April 11, 2011]

QUIRICO LOPEZ, *petitioner, vs.* **ALTURAS GROUP OF COMPANIES and/or MARLITO UY,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE; BASIS AND QUANTUM OF EVIDENCE REQUIRED TO CONSTITUTE JUST CAUSE FOR DISMISSAL, DISCUSSED; MET.— Dismissals have two facets: the legality of the *act* of dismissal, which constitutes substantive due process, and the legality of the *manner* of dismissal which constitutes procedural due process. As to substantive due process, the Court finds that respondent company's loss of trust and confidence arising from petitioner's smuggling out of the scrap iron, compounded by his past acts of unauthorized selling cartons belonging to respondent company, constituted just cause for terminating his services. Loss of trust and confidence as a ground for dismissal of employees covers employees occupying a position of trust who are proven to have breached the trust and confidence reposed on them. *Apropos* is *Cruz v. Court of Appeals* which explains the basis and quantum of evidence of loss of trust and confidence, *viz*: In addition, the language of Article 282(c) of the Labor Code states that the loss of trust and confidence **must be based on willful breach of the trust reposed in the employee by his employer.** Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. **Moreover, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions** otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. 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**

working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence **with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer.** The betrayal of this trust is the essence of the offense for which an employee is penalized. Petitioner, a driver assigned with a specific vehicle, was entrusted with the transportation of respondent company's goods and property, and consequently with its handling and protection, hence, even if he did not occupy a managerial position, he can be said to be holding a position of responsibility. As to his act–principal ground for his dismissal — his attempt to smuggle out the scrap iron belonging to respondent company, the same is undoubtedly work-related.

2. **ID.; ID.; PROCEDURAL DUE PROCESS REQUIREMENT, EXPLAINED; COMPLIED WITH.—** Respondent company's charge against petitioner was amply proven by substantial evidence consisting of the affidavits of various employees of respondent. x x x. It is, however, with respect to the appellate court's finding that petitioner was not afforded procedural due process that the Court deviates from. Procedural due process has been defined as giving an opportunity to be heard before judgment is rendered. In termination cases, *Perez v. Philippine Telegraph and Telephone Company,* illuminates on the correct proceedings to be followed therein in order to comply with the due process requirement: x x x. **After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation** (which may be in the form of a letter, memorandum, affidavit or position paper) **and offer evidence in support thereof**, like relevant company records (such as his 201 file and daily time records) **and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules**

or practice requires an actual hearing as part of employment pretermination procedure. Petitioner was given the opportunity to explain his side when he was informed of the charge against him and required to submit his written explanation with which he complied. That there might have been no hearing is of no moment, for as *Autobus Workers' Union v. NLRC* holds: This Court has held that **there is no violation of due process even if no hearing was conducted, where the party was given a chance to explain his side of the controversy.** What is frowned upon is the denial of the opportunity to be heard.

3. **ID.; ID.; ID.; THE RIGHT TO COUNSEL AND THE ASSISTANCE OF ONE IN INVESTIGATIONS INVOLVING TERMINATION CASES IS NEITHER INDISPENSABLE NOR MANDATORY; EXCEPTION; AWARD OF NOMINAL DAMAGES NOT PROPER WHERE THE TWIN-NOTICE REQUIREMENT HAD BEEN COMPLIED WITH.—** [T]he Court finds that it was error for the NLRC to opine that petitioner should have been afforded counsel or advised of the right to counsel. The right to counsel and the assistance of one in investigations involving termination cases is neither indispensable nor mandatory, except when the employee himself requests for one or that he manifests that he wants a formal hearing on the charges against him. In petitioner's case, there is no showing that he requested for a formal hearing to be conducted or that he be assisted by counsel. Verily, since he was furnished a second notice informing him of his dismissal and the grounds therefor, the twin-notice requirement had been complied with to call for a deletion of the appellate court's award of nominal damages to petitioner.

4. **ID.; ID.; THE ACQUITTAL OF THE EMPLOYEE IN A CRIMINAL CASE FOR FAILURE TO SATISFY THE QUANTUM OF PROOF REQUIRED FOR CONVICTION DOES NOT AUTOMATICALLY PRECLUDE A DETERMINATION THAT HE IS GUILTY OF ACTS INIMICAL, TO THE EMPLOYER'S INTEREST RESULTING IN LOSS OF TRUST AND CONFIDENCE.—** As for the subsequent dismissal of the criminal cases filed against petitioner, criminal and labor proceedings are distinct and separate from each other. Each requires a different quantum of proof, arising though they are from the same set of facts

or circumstances. As *Vergara v. NLRC* holds: An employee's acquittal in a criminal case does not automatically preclude a determination that he has been guilty of acts inimical to the employer's interest resulting in loss of trust and confidence. Corollarily, the ground for the dismissal of an employee does not require proof beyond reasonable doubt; as noted earlier, the quantum of proof required is merely substantial evidence. More importantly, the trial court acquitted petitioner not because he did not commit the offense, but merely because of the failure of the prosecution to prove his guilt beyond reasonable doubt. **In other words, while the evidence presented against petitioner did not satisfy the quantum of proof required for conviction in a criminal case, it substantially proved his culpability which warranted his dismissal from employment.**

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Edward Anthony B. Ramos for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Quirico Lopez (petitioner) was hired by respondent Alturas Group of Companies in 1997 as truck driver. Ten years later or sometime in November 2007, he was dismissed after he was allegedly caught by respondent's security guard in the act of attempting to smuggle out of the company premises 60 kilos of scrap iron worth ₱840 aboard respondents' Isuzu Cargo Aluminum Van with Plate Number PHP 271 that was then assigned to him. When questioned, petitioner allegedly admitted to the security guard that he was taking out the scrap iron consisting of lift springs out of which he would make axes.

Petitioner, in compliance with the Show Cause Notice[1] dated December 5, 2007 issued by respondent company's Human

[1] Records, p. 24.

Resource Department Manager, denied the allegations by a handwritten explanation written in the Visayan dialect.

Finding petitioner's explanation unsatisfactory, respondent company terminated his employment by Notice of Termination[2] effective December 14, 2007 on the grounds of loss of trust and confidence, and of violation of company rules and regulations. In issuing the Notice, respondent company also took into account the result of an investigation showing that petitioner had been smuggling out its cartons which he had sold, in conspiracy with one Maritess Alaba, for his own benefit to thus prompt it to file a criminal case for Qualified Theft[3] against him before the Regional Trial Court (RTC) of Bohol. It had in fact earlier filed another criminal case for Qualified Theft[4] against petitioner arising from the theft of the scrap iron.

Petitioner thereupon filed a complaint against respondent company for illegal dismissal and underpayment of wages. He claimed that the smuggling charge against him was fabricated to justify his illegal dismissal; that the filing of the charge came about after he reported the loss of the original copy of his pay slip, which report, he went on to claim, respondent company took to mean that he could use the pay slip as evidence for filing a complaint for violation of labor laws; and that on account of the immediately stated concern of respondent, it forced him into executing an affidavit that if the pay slip is eventually found, it could not be used in any proceedings between them.

By Decision[5] of June 30, 2008, the Labor Arbiter, holding that the pendency of the criminal case involving the scrap iron did not warrant the suspension of the proceedings before him, held that petitioner's dismissal was justified, for he, a truck driver, held a position of trust and confidence, and his act of

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[2] *Id.* at 25.

[3] *Id.* at 82.

[4] *Id.* at 88.

[5] Records, pp. 122-126. Penned by Labor Arbiter Fructuoso Villarin, IV.

stealing company property was a violation of the trust reposed upon him.

Respecting the charge of underpayment of wages, the Labor Arbiter noted that on the basis of the records, petitioner had been paid the correct wages and benefits mandated by law.

The Labor Arbiter accordingly dismissed petitioner's complaint.

On appeal, the National Labor Relations Commission's (NLRC) Fourth Division (Cebu City) *set aside* the Labor Arbiter's Decision by Decision[6] dated December 22, 2008, finding that respondent's evidence did not suffice to warrant the termination of petitioner's services; and that petitioner's alleged admission of taking the scrap iron was belied by his vehement denial, as even the security guard, one Gerardo Luega, who allegedly witnessed the asportation and before whom the alleged admission was made, did not even execute an affidavit in support thereof.

Citing *Salaw v. NLRC*,[7] the NLRC went on to hold that petitioner should have been afforded, or at least advised of the right to counsel. It thus held that "any evaluation which was based only on the explanation to the show-cause letter and any so-called investigation but without confrontation of the vital witnesses, do[es] not suffice."

Respondent company's motion for reconsideration was denied by Resolution[8] of April 30, 2009, hence, it appealed to the Court of Appeals.

By Report[9] of December 18, 2009, the appellate court *reversed* the NLRC ruling. It held that respondent company was justified

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[6] Records, pp. 219-221. Penned by Presiding Commissioner Violeta Ortiz-Bantug and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[7] G.R. No. 90786, September 27, 1991, 202 SCRA 7.

[8] Records, pp. 280-281. Penned by Presiding Commissioner Violeta Ortiz-Bantug and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[9] *Rollo*, pp. 325-333. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rodil V. Zalameda and Agnes Reyes-Carpio.

in terminating petitioner's employment on the ground of loss of trust and confidence, his alleged act of smuggling out the scrap iron having been sufficiently established through the affidavits of Patrocinio Borja and Zalde Tare, supervisor and junior supervisor, respectively, of its Supermarket Motorpool.

The appellate court further held that "the evidence supporting the criminal charge, found after preliminary investigation are [*sic*] sufficient to show *prima facie* guilt, which constitutes just cause for [petitioner's dismissal] based on loss of trust and confidence"; and that petitioner's subsequent acquittal in the criminal case "did not automatically preclude a determination that he is guilty of acts inimical to the employer's interest resulting in loss of trust and confidence."

Albeit the appellate court found that petitioner's dismissal was for a just cause, it held that due process was not observed when respondent company failed to give him a chance to defend his side in a proper hearing. Following *Agabon v. NLRC,*[10] the appellate court thus ordered respondent to pay nominal damages of ₱30,000.

Thus the appellate court disposed:

> WHEREFORE, in view of the foregoing, the Decision of the NLRC dated December 22, 2008 is hereby **MODIFIED**. Private respondent's dismissal from employment is upheld on the ground of loss of trust and confidence, a just cause for termination. However, for failure to comply fully with the procedural due process, petitioner is **ORDERED** to pay private respondent the amount of ₱30,000.00 as nominal damages.[11] (underscoring supplied)

Hence, the present petition for review on *certiorari*.

Dismissals have two facets: the legality of the *act* of dismissal, which constitutes substantive due process, and the legality of the *manner* of dismissal which constitutes procedural due process.[12]

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[10] G.R. No. 158693, November 17, 2004, 442 SCRA 573,

[11] CA *rollo*, p. 315.

[12] *Tirazona v. Court of Appeals,* G.R. No. 169712, March 14, 2008.

As to substantive due process, the Court finds that respondent company's loss of trust and confidence arising from petitioner's smuggling out of the scrap iron, compounded by his past acts of unauthorized selling cartons belonging to respondent company, constituted just cause for terminating his services.

Loss of trust and confidence as a ground for dismissal of employees covers employees occupying a position of trust who are proven to have breached the trust and confidence reposed on them. *Apropos* is *Cruz v. Court of Appeals*[13] which explains the basis and quantum of evidence of loss of trust and confidence, *viz*:

> In addition, the language of Article 282(c) of the Labor Code states that the loss of trust and confidence **must be based on willful breach of the trust reposed in the employee by his employer.** Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. **Moreover, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions** otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. 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 working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility,** trust and confidence or that the employee concerned is entrusted with confidence **with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer.** The betrayal of this trust is the essence of the offense for which an employee is penalized. (emphasis and underscoring supplied)

Petitioner, a driver assigned with a specific vehicle, was entrusted with the transportation of respondent company's goods and property, and consequently with its handling and protection,

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[13] G.R. No. 148544, July 12, 2006.

hence, even if he did not occupy a managerial position, he can be said to be holding a position of responsibility. As to his act–principal ground for his dismissal — his attempt to smuggle out the scrap iron belonging to respondent company, the same is undoubtedly work-related.

Respondent company's charge against petitioner was amply proven by substantial evidence consisting of the affidavits of various employees of respondent. Contrary to the NLRC's observation, the security guard who apprehended petitioner, Gerardo Luega, actually executed a statement[14] relative to the smuggling out of scrap iron, which was attached to, and served as basis for the filing of, the corresponding complaint for Qualified Theft. Petitioner's claim that he was framed up after he allegedly lost his pay slip to draw respondent company to suspect that he might file a labor complaint for underpayment does not inspire credence.

It is, however, with respect to the appellate court's finding that petitioner was not afforded procedural due process that the Court deviates from. Procedural due process has been defined as giving an opportunity to be heard before judgment is rendered.[15] In termination cases, *Perez v. Philippine Telegraph and Telephone Company,*[16] illuminates on the correct proceedings to be followed therein in order to comply with the due process requirement:

> The above rulings are a clear recognition that the employer may provide an employee with ample opportunity to be heard and defend himself with the assistance of a representative or counsel in ways other than a formal hearing. The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.

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[14] *Philtread Tire and Rubber Corp. v.Vicente*, G.R. No. 142759, 10 November 2004, 441 SCRA 574, 581.

[15] *Cruz v. Coca-Cola Bottlers Phils., Inc.,* G.R. No. 165586, 15 June 2005, 460 SCRA 340, 351.

[16] G.R. No. 152048, April 7, 2009.

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) **and offer evidence in support thereof**, like relevant company records (such as his 201 file and daily time records) **and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also <u>include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory</u>, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure**. (emphasis and underscoring supplied)

Petitioner was given the opportunity to explain his side when he was informed of the charge against him and required to submit his written explanation with which he complied. That there might have been no hearing is of no moment, for as *Autobus Workers' Union v. NLRC*[17] holds:

This Court has held that **there is <u>no violation of due process</u> even if no hearing was conducted, <u>where the party was given a chance to explain his side of the controversy</u>.** What is frowned upon is the denial of the opportunity to be heard. (emphasis supplied)

Parenthetically, the Court finds that it was error for the NLRC to opine that petitioner should have been afforded counsel or advised of the right to counsel. The right to counsel and the assistance of one in investigations involving termination cases is neither indispensable nor mandatory, except when the employee himself requests for one or that he manifests that he wants a formal hearing on the charges against him. In petitioner's case, there is no showing that he requested for a formal hearing to be conducted or that he be assisted by counsel. Verily, since he was furnished a second notice informing him of his dismissal and the grounds therefor, the twin-notice requirement had been

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[17] 353 Phil. 419.

complied with to call for a deletion of the appellate court's award of nominal damages to petitioner.

As for the subsequent dismissal of the criminal cases[18] filed against petitioner, criminal and labor proceedings are distinct and separate from each other. Each requires a different quantum of proof, arising though they are from the same set of facts or circumstances. As *Vergara v. NLRC*[19] holds:

> An employee's acquittal in a criminal case does not automatically preclude a determination that he has been guilty of acts inimical to the employer's interest resulting in loss of trust and confidence. Corollarily, the ground for the dismissal of an employee does not require proof beyond reasonable doubt; as noted earlier, the quantum of proof required is merely substantial evidence. More importantly, the trial court acquitted petitioner not because he did not commit the offense, but merely because of the failure of the prosecution to prove his guilt beyond reasonable doubt. **In other words, while the evidence presented against petitioner did not satisfy the quantum of proof required for conviction in a criminal case, it substantially proved his culpability which warranted his dismissal from employment.** (emphasis supplied)

WHEREFORE, the petition is *DENIED*. The Report dated December 18, 2009 of the Court of Appeals dismissing petitioner's complaint is *AFFIRMED* with *MODIFICATION in* that the award of nominal damages in the amount of ₱30,000 is *DELETED*.

Costs against petitioner.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[18] Vide Resolution dated June 12, 2008 re I.S. Case No. 2008-97 for Qualified Theft of the Cartons, records, pp. 149-152.

[19] G.R. No. 117196, December 5, 1997.

SECOND DIVISION

[G.R. No. 191754. April 11, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GREGORIO FELIPE *y* CALINGANGAN,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREOF IS ENTITLED TO RESPECT UNLESS CERTAIN FACTS OF SUBSTANCE AND VALUE WERE OVERLOOKED WHICH, IF CONSIDERED, MIGHT AFFECT THE RESULT OF THE CASE; FINDINGS OF FACT OF THE TRIAL COURT, AFFIRMED.—** Generally, the Court will not disturb the findings of the trial court on the credibility of witnesses, as it was in the better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court; it had the unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is entitled to respect unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. Although not constrained to blindly accept the findings of fact of trial courts, appellate courts can rest assured that such facts were gathered from witnesses who presented their statements live and in person in open court. In cases where conflicting sets of facts are presented, the trial courts are in the best position to recognize and distinguish spontaneous declaration from rehearsed spiel, straightforward assertion from a stuttering claim, definite statement from tentative disclosure, and to a certain degree, truth from untruth. In the case at bar, no compelling reason exists to reverse the findings of fact of the trial court. There is no showing in the records and transcripts of any apparent inconsistencies in the prosecution witnesses' account of the events which transpired and led to the arrest of Felipe. Their testimonies were frank, candid, and clear, which left no doubt as to their veracity and truthfulness.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS; PROVEN.—** It bears stressing that what is material to the prosecution for illegal sale of drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. In other words, the essential elements of the crime of illegal sale of prohibited drugs are: (1) the accused sold and delivered a prohibited drug to another; and (2) he knew that what he had sold and delivered was a prohibited drug. In the present case, as aptly found by the RTC and affirmed by the CA, all these elements were satisfactorily proven by the prosecution.

3. **ID.; ID.; ID.; ABSENCE OF MARKED MONEY DOES NOT CREATE A HIATUS IN THE EVIDENCE FOR THE PROSECUTION PROVIDED THAT THE SALE WAS ADEQUATELY PROVEN.—** [F]elipe's reliance on the alleged inexistence of the buy-bust money to disprove the fact of sale is misplaced. This Court had previously ruled that the use of dusted money is not indispensable to prove the illegal sale of drugs. In fact, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proven the sale.

4. **REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND FRAME-UP; TO PROSPER, THE SAME MUST BE PROVED WITH STRONG AND CONVINCING EVIDENCE.—** Felipe's contention that he was framed-up deserves scant consideration. The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.

5. **ID.; ID.; PRESUMPTIONS; IN CASES INVOLVING VIOLATIONS OF THE COMPREHENSIVE DANGEROUS DRUGS ACT, POLICE OFFICERS ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER; EXCEPTIONS; NOT PRESENT.—** It is a settled rule that in cases involving violations of the Comprehensive 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. This presumption can only be overturned through clear and convincing evidence that show either of two things: (1) that they were not properly performing their duty; or (2) that they were inspired by any improper motive. In the absence of clear and convincing evidence of the foregoing, as in the case at bar, this Court cannot accept the defense of bare denial and, instead, apply the presumption of regularity in the performance of official duties by the law enforcement officers.

6. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); SECTION 21 OF THE IMPLEMENTING RULES; FAILURE OF THE LAW ENFORCERS TO COMPLY STRICTLY THEREOF IS NOT FATAL PROVIDED THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED.—** [F]elipe's argument that the prosecution failed to show compliance with Section 21 of RA No. 9165 and its implementing rules regarding the custody and disposition of the evidence against him, does not hold water. x x x As can be gleaned from the language of Section 21 of the Implementing Rules, it is clear that the failure of the law enforcers to comply strictly with it is not fatal. It does not render Felipe's arrest illegal nor the evidence adduced against him inadmissible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." In the case at bar, the requirements of the law were substantially complied with and the integrity of the drugs seized from Felipe were safeguarded. More importantly, the chain of custody of the prohibited drugs taken from Felipe was sufficiently established not to have been broken.

7. **ID.; ID.; ILLEGAL SALE OF PROHIBITED DRUGS; PROPER PENALTY.—** With respect to the penalty, the Court affirms the penalty imposed by the RTC and the Court of Appeals. Section 5, Article II of RA No. 9165, provides: 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.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Appellant Gregorio Felipe (Felipe) seeks the reversal of the Decision[1] of the Court of Appeals (CA), dated December 3, 2009, in CA-G.R. CR-H.C. No. 03038, which in turn affirmed *in toto* the Decision of the Regional Trial Court (RTC), Laoag City, Branch 13, in Criminal Case No. 13251-13 convicting him of Violation of Section 5, Article II of Republic Act (RA) No. 9165.

The factual and procedural antecedents are as follows:

On January 11, 2007, an Information[2] for Violation of Section 5, Article II of RA No. 9165 was filed against Felipe, the accusatory portion of which reads:

That on or about the 10th day of January 2007, in the city of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority, did then and there willfully, unlawfully and feloniously sell and deliver to a police poseur buyer methamphetamine hydrocholoride (sic) "*Shabu*" weighing more or less 0.6411 (excluding plastic container), in violation of the aforecited law.

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Estela M. Perlas-Bernabe and Michael P. Elbinias, concurring; *rollo*, pp. 2-10.

[2] CA *rollo*, pp. 9-10.

CONTRARY TO LAW.

Upon his arraignment, Felipe pleaded not guilty to the charge. Consequently, trial on the merits ensued.

Evidence for the Prosecution

On January 10, 2007, at around 6:00 o'clock (sic) in the evening, Edwin Rumbaoa, a confidential police informant, went to the intelligence office of the Laoag City Police Station and reported to SPO3 Roviemanuel Balolong (or "SPO3 Balolong"), Chief of Intelligence Division, that there was a transaction involving a certain "Gorio," (sic) herein [Felipe], for the delivery of "*shabu*" worth ₱6,000.00 to a prospective buyer at the Rizal Park in Laoag City. SPO3 Balolong immediately relayed the information to the Chief of Police, Police Superintendent Wilson Lopez, who instructed him to organize a team to conduct a buy-bust operation. SPO3 Balolong then presided over a briefing, wherein he designated PO2 Randy Diego (or "PO2 Diego") as poseur-buyer, while he and SPO3 Arthur Mateo (or "SPO3 Mateo") would act as back-up security.

At around 6:45 o'clock (sic) in the evening, while still in the investigation office, the confidential informant contacted [Felipe] to confirm the transaction and informed the latter of the description of the prospective buyer as one wearing a white bull cap, white t-shirt and maong short pants, who would be waiting in front of Rizal Park along the northernmost part of Ablan Avenue, Laoag City at around 7:00 o'clock (sic) in the evening. Thereafter, PO2 Diego proceeded to the area on board a motorcycle, while the rest of the members of the team followed riding on a separate vehicle. PO2 Diego positioned himself at the designated place, while the rest of the members of the group parked their vehicle in front of Mariano Marcos State University.

After about fifteen (15) minutes, PO2 Diego, who went directly to the northernmost part of Rizal Park riding on his motorcycle, saw [Felipe] driving a tricycle coming from the south. [Felipe] parked his tricycle north of the place where PO2 Diego was. When [Felipe] saw PO2 Diego, he immediately approached the latter and uttered *"Ne daytoyen ti ideliberko kenka"* ("here is the thing I am going to deliver to you"). [Felipe] then handed over the "*shabu*" contained in a Hope brand cigarette case to PO2 Diego who, upon examination that the case contained two (2) plastic sachets of white crystalline

substance, pocketed the same and introduced himself as a police officer. Thereafter, PO2 Diego arrested [Felipe] who resisted and tried to free himself. Upon seeing the commotion from where they positioned themselves, SPO3 Balolong and SPO3 Mateo immediately went to assist PO2 Diego. They restrained [Felipe], informed him of his constitutional rights and he was taken to the Laoag Police Station where the incident was recorded in the police blotter.

The two (2) plastic sachets of "*shabu*" were marked by PO2 Diego with his initials "RD" at the police station and were turned-over to SPO2 Loreto Ancheta (or "SPO2 Ancheta") who recorded the receipt of said evidence in his logbook and marked the same with "LCPS" which stands for Laoag City Police Station and "GF" for [Felipe's] name. Afterwards, SPO2 Ancheta delivered the two (2) plastic sachets to the Ilocos Norte Provincial Crime Laboratory Office at Camp Captain Valentine S. Juan, Laoag City, where they were received by SPO3 Diosdado Mamotos in the presence of P/Insp. Chris Cabatic, the Forensic Chemist Officer. After a qualitative examination of the contents of two (2) plastic sachets, the same tested positive for methamphetamine hydrochloride, a prohibited drug.[3]

Evidence for the Defense

For his defense, [Felipe] averred that on January 10, 2007, at around 6:30 o'clock (sic) in the evening, he was ferrying a passenger that he picked up in front of PLDT office in Laoag City to Marcos Stadium. After his passenger alighted from the tricycle, he decided to park at the northeastern part of Rizal Park and wait for other passengers. While thereat, somebody suddenly grabbed his collar and hands. When he looked, he saw PO2 Diego with three (3) companions whom he was not able to recognize. He asked PO2 Diego why was he (sic) being held and the latter answered that he was being put under arrest. His hands were cuffed at his back by PO2 Diego's companions. He asked them again what his fault was, but the group told him that they will go to the police station. While [Felipe] was being pulled and boarded on his tricycle, he pleaded for his freedom and afterwards, shouted for help from the tricycle drivers around, but to no avail.

When [Felipe] arrived at the police station, he was allegedly locked up inside a room and SPO3 Balolong, whom he had known for a

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[3] *Rollo*, pp. 3-4.

long time as he would usually convey passengers at the police headquarters, suddenly went inside and asked, "is he the one?" and immediately punched him on the abdomen. [Felipe] was then asked by SPO3 Balolong who the operator of his tricycle was and he answered that it was a certain Ian Ganitano. SPO3 [Balolong] again asked whether it was "Ian Ganitano or Virgilio Ganitano?" He answered that Virgilio Ganitano is the father of Ian Ganitano. SPO3 Balolong said that if that was the case, then [Felipe] was a follower of Virgilio Ganitano. [Felipe] answered that he was not, after which, SPO3 Balolong punched him again on the abdomen.

Thereafter, PO2 Diego allegedly handed a Hope cigarette pack to SPO3 Balolong who asked [Felipe] if he was smoking. [Felipe] answered in the affirmative and SPO3 Balolong said, "here also is a *shabu*, where did this come from? From Virgilio?" [Felipe] replied that he did not know about any "*shabu*" contained in the cigarette pack. PO2 Diego then frisked him and took away his cellular phone and wallet. The police officers then asked [Felipe] if he wanted a *palit-ulo* to which he asked what *palit-ulo* means. The police officers explained that if he gives information where Virgilio Ganitano was keeping "*shabu*" and from where he sourced it, they will arrest Virgilio Ganitano, instead of [Felipe]. However, [Felipe] answered that he did not know anything about the "*shabu*" being kept by Virgilio Ganitano. Thereafter, SPO3 Balolong led [Felipe] inside a room and the other police officers, and since they were the only ones inside the room now, [Felipe] could freely tell him everything about Virgilio Ganitano who should be charged in court. [Felipe], however, told SPO3 Balolong that he did not know anything about Ganitano's keeping "*shabu*" and had he known it, he would have told them at the first instance. The police officers then brought [Felipe] out and placed him in a detention cell at the police headquarters and filed the instant case against him.[4]

On September 28, 2007, the RTC, after finding that the prosecution has established all the elements of the offense charged against Felipe, rendered a Decision[5] convicting Felipe of Violation of Section 5, Article II of RA No. 9165. The dispositive portion of which reads:

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[4] *Id.* at 4-5.

[5] CA *rollo*, pp. 36-45.

WHEREFORE, judgment is hereby rendered finding accused Gregorio Felipe GUILTY beyond reasonable doubt of illegal delivery of *shabu* and is therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00

The two (2) plastic sachets of *shabu* subject hereof, weighing 0.6411 gram(s), is hereby confiscated, the same to be disposed as the law prescribes.

SO ORDERED.[6]

Aggrieved, Felipe appealed the Decision before the CA, which was later docketed as CA-G.R. CR-H.C. No. 03038.

On December 3, 2009, the CA rendered a Decision[7] affirming *in toto* the decision of the RTC, the dispositive portion of which reads:

WHEREFORE, premises considered, the assailed decision of the RTC of Laoag City, Branch 13, dated September 28, 2007, is hereby **AFFIRMED *IN TOTO*.**

SO ORDERED.

In affirming the decision of the RTC, the CA ratiocinated that Felipe's contention of lack of credibility of the prosecution witnesses and his theory of frame-up was unfounded. The CA concluded that indeed, a legitimate buy-bust operation occurred, as such, there can be no question as to the guilt of Felipe. Moreover, contrary to Felipe's allegation, the CA found that the proper procedure in the custody and disposition of the seized drugs was followed by the police officers who were involved in its handling.

Felipe now comes before this Court for relief.

In a Resolution[8] dated July 2, 2010, the Court required the parties to file their respective supplemental briefs, if they so

[6] *Id.* at 45.

[7] *Rollo*, pp. 2-10.

[8] *Id.* at 22.

desire. In their respective Manifestations,[9] the parties waived the filing of their supplemental briefs and, instead, adopted their respective briefs filed before the CA.

Hence, Felipe raises the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE LACK OF PROOF THAT THE ACCUSED-APPELLANT KNOWINGLY SOLD AND DELIVERED THE DANGEROUS DRUGS.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON THE HIGHLY INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE DRUG SPECIMENS.[10]

Felipe posits that he was merely convicted based on the inference that an alleged valid buy-bust operation was conducted. Felipe maintains that it was incredulous to believe the testimony of PO2 Diego that he handed the pack of cigarettes which contained the "*shabu*" to him, considering that he did not know who PO2 Diego was. Also, the fact that he did not receive any buy-bust money from PO2 Diego and that the alleged operation purportedly went down at a public place, which is highly improbable and contrary to logic, supported his allegation that no buy-bust operation occurred. Felipe also argues that he was framed-up and arrested to be used by the police to apprehend a certain Virgilio Ganitano, a suspected "*shabu*" peddler.

Moreover, Felipe contends that the chain of custody of the alleged illegal drugs was highly questionable, considering that it

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[9] *Id.* at 28-29; 32-33.

[10] CA *rollo*, pp. 77-78.

was not marked at place of the arrest, but only when they reached the Laoag City Police Station.

On the other hand, the State, represented by the Office of the Solicitor General (OSG), maintains that the trial court and the CA correctly found Felipe guilty beyond reasonable doubt of the crime charged and that his conviction should be sustained by this Court.

Simply stated, the issue in this case is whether or not the prosecution has proven the guilt of Felipe for illegal sale of dangerous drugs beyond reasonable doubt.

We rule in the affirmative.

Generally, the Court will not disturb the findings of the trial court on the credibility of witnesses, as it was in the better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court; it had the unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is entitled to respect unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[11]

Although not constrained to blindly accept the findings of fact of trial courts, appellate courts can rest assured that such facts were gathered from witnesses who presented their statements live and in person in open court. In cases where conflicting sets of facts are presented, the trial courts are in the best position to recognize and distinguish spontaneous declaration from rehearsed spiel, straightforward assertion from a stuttering claim, definite statement from tentative disclosure, and to a certain degree, truth from untruth.[12]

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[11] *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903.

[12] *People v. Willie Midenilla y Alaboso, Ricky Delos Santos y Milarpes and Roberto Delos Santos y Milarpes,* G.R. No. 186470, September 27, 2010.

In the case at bar, no compelling reason exists to reverse the findings of fact of the trial court. There is no showing in the records and transcripts of any apparent inconsistencies in the prosecution witnesses' account of the events which transpired and led to the arrest of Felipe. Their testimonies were frank, candid, and clear, which left no doubt as to their veracity and truthfulness.

It bears stressing that what is material to the prosecution for illegal sale of drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. In other words, the essential elements of the crime of illegal sale of prohibited drugs are: (1) the accused sold and delivered a prohibited drug to another; and (2) he knew that what he had sold and delivered was a prohibited drug.[13] In the present case, as aptly found by the RTC and affirmed by the CA, all these elements were satisfactorily proven by the prosecution, *viz.*:

> In the case at bar, We find that the prosecution was able to establish the fact of sale, starting from the time that SPO3 Balolong received the information from their "police asset" up to the time that the buy-bust team proceeded to the target location at Rizal Park where the actual sale happened. Noteworthy is the fact that even before the actual delivery of the prohibited drugs to the poseur-buyer, the "police asset" confirmed first with appellant, through text messages, the intended delivery of the said drugs with a value of ₱6,000.00. Thus, as far as the sale is concerned, the same was already perfected earlier through a confirmed text massage by appellant. The agreement between him and PO2 Diego to meet later on at the agreed place was only for purposes of confirming the sale by the delivery of the prohibited drugs.[14]

Furthermore, Felipe's reliance on the alleged inexistence of the buy-bust money to disprove the fact of sale is misplaced.

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[13] *People v. Pendatun*, 478 Phil. 201, 212 (2004), citing *People v. Cercado*, 385 SCRA 277 (2002); *People v. Pacis*, 434 Phil. 148, 159 (2002).

[14] *Rollo*, p. 7.

This Court had previously ruled that the use of dusted money is not indispensable to prove the illegal sale of drugs. In fact, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proven the sale.[15]

Also, Felipe's contention that he was framed-up deserves scant consideration. The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.

As found by the trial court, the defense has failed to show sufficient basis to support Felipe's contention, to wit:

> More significantly, the claims of the accused that he was just arrested without any reason at all and that the police just planted the *shabu* against him are simply incredible. If the police did so, then rhyme and reason dictate that they had some sinister and greedy motives against the accused. But the accused never asserted any reason why the police would have just arrested him and then planted the *shabu* against him. He did not claim that the policemen tried to extort from him or that they had a previous grudge to grind against him. He did not say that they did it for promotion or out of overzealousness in the performance of their duty as police officers. What is clear on record is that he never had any quarrel with the policemen, PO2 Randy Diego and SPO3 Balolong. In this connection, the Court cannot even believe the claim of the accused that he knows PO2 Diego. Again, it was so easy for him to have laid such a claim. Aside from his self-serving testimony that he had seen and known PO2 Diego at the DPS where he would register whenever he conveyed a passenger (out of city limits) at nighttime, there is no other evidence to prove that PO2 Diego was indeed assigned at one time or another at the DPS. As the Court would take notice from his many court appearances, PO2 Diego had always been assigned at the Intelligence

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[15] *Lapuz v. People*, 476 Phil. 517, 524 (2004); *People v. Saludes*, 451 Phil. 719, 726 (2003); *People v. Gireng*, 311 Phil. 12, 21 (1995), citing *People v. Pascual*, 208 SCRA 393 (1992) and *People v. Hoble*, 211 SCRA 675 (1992).

and Investigation section of the Laoag City Police Station. In fact, he testified that he has been assigned in that section for more or less three years.[16]

It is a settled rule that in cases involving violations of the Comprehensive 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.[17] This presumption can only be overturned through clear and convincing evidence that show either of two things: (1) that they were not properly performing their duty; or (2) that they were inspired by any improper motive.[18] In the absence of clear and convincing evidence of the foregoing, as in the case at bar, this Court cannot accept the defense of bare denial and, instead, apply the presumption of regularity in the performance of official duties by the law enforcement officers.

Finally, Felipe's argument that the prosecution failed to show compliance with Section 21 of RA No. 9165 and its implementing rules regarding the custody and disposition of the evidence against him, does not hold water.

Section 21 of the Implementing Rules and Regulations of RA No. 9165 provides:

> SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[16] CA *rollo*, p. 44.

[17] *People v. Tamayo*, G.R. No. 187070, February 24, 2010, 613 SCRA 556, 564.

[18] *People v. Padasin*, 445 Phil. 448, 456 (2003).

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. x x x[19]

As can be gleaned from the language of Section 21 of the Implementing Rules, it is clear that the failure of the law enforcers to comply strictly with it is not fatal. It does not render Felipe's arrest illegal nor the evidence adduced against him inadmissible.[20] What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[21]

In the case at bar, the requirements of the law were substantially complied with and the integrity of the drugs seized from Felipe were safeguarded. More importantly, the chain of custody of the prohibited drugs taken from Felipe was sufficiently established not to have been broken. The factual antecedents of the case reveal that after Felipe handed the pack of cigarettes which contained the two (2) sachets of *shabu* to PO2 Diego, the latter

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[19] Emphasis supplied.

[20] *People v. Pagkalinawan*, G.R. No. 184805, March 3, 2010, 614 SCRA 202, 218, citing *People v. Naquita*, 560 SCRA 430, 448 (2008).

[21] *Id.*

immediately arrested Felipe. Together with Felipe, the prohibited drugs seized from him were immediately brought to the Laoag City Police Station and, upon arriving thereat, PO2 Diego marked the items with his initials and, thereafter, turned them over to the evidence custodian, SPO2 Ancheta, who also marked the evidence and recorded its receipt in his logbook. Thereafter, SPO2 Ancheta delivered the two (2) plastic sachets to the Ilocos Norte Provincial Crime Laboratory Office, Laoag City, where they were received by SPO3 Diosdado Mamotos in the presence of P/Insp. Chris Cabatic, the Forensic Chemist Officer. After a qualitative examination of the contents of the two (2) plastic sachets, the same tested positive for methamphetamine hydrochloride. Thus, an unbroken chain of custody of the seized drugs had been established by the prosecution from the buy-bust team, to the investigating officer, and to the forensic chemist. There is no doubt that the items seized from Felipe at the crime scene were also the same items marked by the arresting officers, sent to the Crime Laboratory, and later on tested positive for methamphetamine hydrochloride.

With respect to the penalty, the Court affirms the penalty imposed by the RTC and the Court of Appeals. Section 5, Article II of RA No. 9165, provides:

> 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.

WHEREFORE, the Decision dated December 3, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03038, finding appellant Gregorio Felipe *y* Calingangan guilty beyond reasonable doubt of the crime charged in Criminal Case No. 13251-13 for violation of Section 5, Article II of Republic Act No. 9165, is *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192188. April 11, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANDREW ROBLE,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION THEREOF IS ENTITLED TO GREAT WEIGHT AND IS GENERALLY NOT DISTURBED UPON APPEAL; EXCEPTION; PRESENT.—** It is hornbook doctrine that the evaluation of the trial court of the credibility of the witnesses and their testimonies is entitled to great weight and is generally not disturbed upon appeal. However, such rule does not apply when the trial court has overlooked, misapprehended, or misapplied any fact of weight or substance. In the instant case, circumstances are present that, when properly appreciated, would warrant the acquittal of accused-appellant.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); SALE OF DANGEROUS DRUGS; ELEMENTS; NOT PROVED.—** In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following elements: "(1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor." Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti*. *Corpus delicti* means the "actual commission by someone of the particular crime charged."

3. **ID.; ID.; ID.; CHAIN OF CUSTODY; IT MUST BE ESTABLISHED THAT THE SUBSTANCE BOUGHT DURING THE BUY-BUST OPERATION IS THE SAME SUBSTANCE OFFERED IN COURT.—** Even more doubtful is the identity and integrity of the dangerous drug itself. In prosecutions for illegal sale of dangerous drugs, "[t]he existence of dangerous drugs is a condition *sine qua non* for conviction x x x." Thus, it must be established that the substance bought during the buy-bust operation is the same substance offered in court. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

4. **ID.; ID.; ID.; ID.; IMPORTANCE THEREOF; CASE OF *MALILLIN V. PEOPLE* (G.R. NO. 172953, APRIL 30, 2001), CITED.—** In *Malillin v. People*, the Court explained the importance of the chain of custody, to wit: Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. x x x.

5. **ID.; ID.; ID.; BUY-BUST OPERATION; CONSIDERED LEGAL AND AN EFFECTIVE METHOD OF APPREHENDING DRUG PEDDLERS BUT THE COURT MUST ASCERTAIN IF THE OPERATION WAS SUBJECT TO ANY POLICE ABUSE.—** After a thorough review of the records of the instant case, this Court has serious doubts as to the identity of the drug in question. While a buy-bust operation is legal and has been proved to be an effective method of apprehending drug

peddlers, due regard to constitutional and legal safeguards must be undertaken. It is the duty of the Courts to ascertain if the operation was subject to any police abuse.

6. **ID.; ID.; ID.; CHAIN OF CUSTODY; IDENTITY OF THE PROHIBITED DRUG SEIZED NOT SUFFICIENTLY ESTABLISHED; ABSENT JUSTIFIABLE GROUNDS, NON-COMPLIANCE WITH THE POST-PROCEDURE IN TAKING CUSTODY OF SEIZED DRUGS IS NOT EXCUSABLE.—** [T]he evidence presented by the prosecution is insufficient to prove that the plastic sachets of *shabu* allegedly seized from accused-appellant are the very same objects tested by the crime laboratory and offered in court as evidence. The chain of custody of the drugs is patently broken. Similarly, the prosecution failed to follow the requisites found in Sec. 21 of the Implementing Rules and Regulations (IRR) of RA 9165, which outlines the post-procedure in taking custody of seized drugs x x x. Even though non-compliance with Sec. 21 of the IRR is excusable, such cannot be relied upon when there is lack of any acceptable justification for failure to do so. In *People v. Lorenzo*, citing *People v. Sanchez*, the Court explained that "this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds." In the instant case, no justifiable grounds were put forth by the prosecution for the procedural lapses. In his testimony, PO2 Laurel clearly stated that no inventory was made after he and his team obtained custody of the drugs. This is a patent violation of the aforementioned section. Citing *Zarraga v. People*, the Court, in *People v. Lorenzo*, held that "the lack of inventory on the seized drugs create[s] reasonable doubt as to the identity of the *corpus delicti*." Parenthetically, no coordination with the Philippine Drug Enforcement Agency was made, in violation of Sec. 86(a) of the IRR of RA 9165.

7. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF INNOCENCE; PREVAILS WHERE THE PROSECUTION FAILED TO MEET THE REQUIRED QUANTUM OF EVIDENCE SUFFICIENT TO SUPPORT A CONVICTION.—** Summing up all the circumstances, it behooves this Court not to blindingly accept the flagrantly wanting evidence of the prosecution. Undoubtedly, the prosecution failed to meet the required quantum of evidence

sufficient to support a conviction, in which case, the constitutional presumption of innocence prevails. As we have held, "When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Irene Ann C. Caballes for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the July 14, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR-H.C. No. 00746, which affirmed the May 2, 2007 Decision[2] in Criminal Case No. DNO-2989 of the Regional Trial Court (RTC), Branch 25 in Danao City. The RTC found accused-appellant Andrew Roble (Roble) guilty of violating Section 5,[3] Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

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[1] *Rollo*, pp. 3-11. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Edgardo L. Delos Santos and Rodil V. Zalameda.

[2] CA *rollo*, pp. 29-33. Penned by Judge Edito Y. Enemecio.

[3] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The Facts

The charge against Roble stemmed from the following Information:

> That on or about March 12, 2003 at 6:30 o'clock in the evening more or less, in Looc, Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in a buy-bust operation, did then and there willfully, unlawfully and feloniously sell and deliver two (2) plastic packets containing "*shabu*" powder/granule a regulated drug with a total weight of zero point zero six (0.06) gram to a poseur-buyer for a total consideration of Three Hundred (₱300) pesos without any corresponding license or prescription from the proper authorities as provided by law; and the

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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 chemical 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.

aforesaid packets of "*shabu*" was turned over by the poseur-buyer to the police as evidence.

Contrary to law.[4]

On April 9, 2003, the City Prosecutor Dalmacio D. Suralta (City Prosecutor Suralta) issued a Resolution[5] authorizing the filing of the foregoing information against Roble. Accordingly, a warrant of arrest was issued on April 21, 2003[6] and Roble was arrested on June 17, 2003. On the same date, Roble, through his counsel, filed a Motion for Reinvestigation[7] of the case. In the said motion, Roble intimated that when the case was filed against him, he was in the province of Leyte and, thus, was not able to refute the allegations against him. In an Order dated June 20, 2003, the RTC granted the motion.[8]

After reinvestigation, City Prosecutor Suralta, however, did not find any reason to withdraw the said information[9] and it was given due course by the RTC.[10] As a result, Roble filed a Motion for Reconsideration of the Reinvestigation Report before the Office of the City Prosecutor, which was subsequently denied on January 19, 2004.[11]

On February 4, 2004, Roble was arraigned and pleaded "not guilty" to the offense charged.[12]

During the trial, the prosecution presented witnesses Police Officer 2 Castor Laurel (PO2 Laurel) and Medical Technologist Jude Daniel Mendoza (Medical Technologist Mendoza). On the

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[4] Records, p. 1.

[5] *Id.* at 7.

[6] *Id.* at 9.

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

[8] *Id.* at 15.

[9] *Id.* at 17.

[10] *Id.* at 19.

[11] *Id.* at 128-129.

[12] *Id.* at 135.

other hand, the defense presented accused Roble as its sole witness.

The Prosecution's Version of Facts

On March 12, 2003, at around 5:30 p.m., PO3 Matias Casas (PO3 Casas) received information through a telephone call regarding the illegal drug activities of a certain "Jojo" Roble in Looc, Danao City.[13] Coordination was then made with the Special Operations Group (SOG) and a buy-bust team was formed composed of PO3 Casas, PO2 Laurel, the SOG and the mayor of Danao City, Mayor Ramonito Durano (Mayor Durano).[14] A briefing was conducted where several pieces of marked 100-peso bills were handed to the poseur-buyer, Abner Banzon Cuizon (Cuizon), by PO3 Casas.[15]

At 6:30 p.m., the team proceeded to the reported area. PO3 Casas, PO2 Laurel and Cuizon were aboard a tricycle while the rest of the team were with Mayor Durano.[16] The tricycle was parked on the side of a road where Cuizon alighted and walked to a nearby store, leaving PO3 Casas and PO2 Laurel inside the tricycle. At this time, the tricycle was parked seven (7) meters away from the said store while the group of Mayor Durano was about thirty (30) meters away.[17]

PO2 Laurel saw Cuizon approach a person and hand him money in exchange for plastic sachets. Upon seeing Cuizon scratch his head, which was the pre-arranged signal, the policemen approached to arrest "Jojo" but he was able to flee from the scene.[18] PO3 Casas and PO2 Laurel signaled the rest of the team for assistance but all of them could not locate "Jojo."

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[13] TSN, February 21, 2005, p. 4.

[14] TSN, August 24, 2004, p. 5.

[15] Records, p. 2.

[16] TSN, March 7, 2005, pp. 5-7.

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

[18] TSN, August 24, 2004, p. 6.

Meanwhile, Cuizon gave the sachets to PO3 Casas when they approached to arrest "Jojo." PO3 Casas, in turn, gave them to the investigator, Senior Police Officer 3 Edgar Awe (SPO3 Awe). Thereafter, a request for laboratory examination was made and submitted to the Philippine National Police Crime Laboratory in Camp Sotero Cabahug, Gorordo Avenue, Cebu City.[19] After examination, Medical Technologist Mendoza issued Chemistry Report No. D-459-2003, which stated that the two (2) plastic sachets contained methylamphetamine hydrochloride or *shabu*.[20]

Version of the Defense

In contrast, Roble interposes the defenses of denial and alibi. He testified that from March 11, 2003 to June 14, 2003, he was in Babatngon, Leyte working, to avoid a frame-up by his enemy.[21]

Specifically, on March 12, 2003 at around 2:00 p.m., he went to his cousin, Danilo Roble, to ask him to accompany him to Wantai Piggery, owned by Nicomedes Alde (Alde), where he would apply as a worker on the recommendation of his uncle, Atty. Santiago Maravilles (Atty. Maravilles).[22] Alde told him to come back and bring his bio-data with picture and that he would start working on March 17, 2003.[23] He worked there until May 31, 2003 and was not able to return home until June 14, 2003.[24] In support of his claim, he presented a *Barangay* Certification issued by the *Barangay* Captain, affidavits of Alde and Danilo Roble, vouchers sighed by Alde, and the endorsement letter of Atty. Maravilles.

Roble further testified that the poseur-buyer, Cuizon, is his enemy in Danao City. Roble's girlfriend, Leny Tiango (Tiango),

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[19] Records, p. 6.

[20] *Id.* at 195.

[21] TSN, March 29, 2005, p. 5.

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

[23] TSN, July 20, 2005, p. 3.

[24] *Id.* at 4.

informed him that Cuizon would frame him in a buy-bust operation because Tiango is also the girlfriend of Cuizon.[25]

Ruling of the Trial Court

After trial, the RTC found Roble guilty of the crime charged. The dispositive portion of its Decision reads:

> WHEREFORE, the Court finds the prosecution to have sufficiently established the guilt of the accused beyond reasonable doubt for violating Sec. 5, Art. 11, of R.A. 9165 and, therefore, sentences him to suffer the penalty of LIFE IMPRISONMENT and pay the fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00). The two (2) packets of "*shabu*" which are the evidence in this case shall be forfeited in favor of the government, and turn over to PDEA for disposition and destruction.
>
> SO ORDERED.[26]

On appeal to the CA, Roble argued that the testimony of PO2 Laurel was replete with inconsistencies.

Ruling of the Appellate Court

On July 14, 2009, the CA affirmed the judgment of the lower court based on the time-honored doctrine that the assessment by the trial court of the credibility of the witnesses and their testimonies deserves great respect. The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the appealed decision dated May 2, 2007 rendered by the Regional Trial Court, Branch 25, in Danao City is hereby **AFFIRMED**.
>
> SO ORDERED.[27]

Roble timely filed a notice of appeal of the decision of the CA. On October 13, 2010, he filed his supplemental brief with this Court.

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[25] *Id.* at 13.

[26] Records, pp. 231-232.

[27] *Rollo*, pp. 10-11.

The Issues

Accused-appellant assigns the following errors:

I.

The trial court erred in convicting the accused-appellant of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.[28]

II.

Both the [RTC] and the [CA] erred in relying upon the weakness of the defense of the accused, instead of the strength of the evidence of the prosecution against him, to come up with Decisions finding him guilty as charged.[29]

III.

Corollarily, the [CA] erred in finding that the basic elements for the sale of illegal drugs are present in this case.[30]

IV.

The [CA] erred in finding that the inconsistency in the markings appearing in the letter request and chemistry report are not material enough to cast doubt that the substance subjected for examination was indeed *shabu*.[31]

V.

The [CA] erred in finding that the assessment by the trial court of the credibility of the witnesses and their testimonies deserves great respect and remaining unconvinced that the lower court overlooked any important fact or misapprehended any relevant information, which if properly weighed and considered, would negate or erode its assessment.[32]

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[28] CA *rollo*, p. 20.

[29] *Rollo*, p. 57.

[30] *Id.*

[31] *Id.* at 68.

[32] *Id.* at 69.

Our Ruling

The appeal is meritorious.

Accused-appellant argues that the trial and appellate courts erred in relying on the testimony of the prosecution witnesses. He points out several inconsistencies in the testimony of PO2 Laurel raising doubts as to its credibility. Further, he argues that the buy-bust operation was irregularly conducted resulting in a broken chain in the custody of the drugs.

We agree with accused-appellant.

It is hornbook doctrine that the evaluation of the trial court of the credibility of the witnesses and their testimonies is entitled to great weight and is generally not disturbed upon appeal. However, such rule does not apply when the trial court has overlooked, misapprehended, or misapplied any fact of weight or substance.[33] In the instant case, circumstances are present that, when properly appreciated, would warrant the acquittal of accused-appellant.

In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following elements: "(1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."[34] Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti*.[35] *Corpus delicti* means the "actual commission by someone of the particular crime charged."[36]

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[33] *People v. Casimiro*, G.R. No. 146277, June 20, 2002, 383 SCRA 390, 398; citations omitted.

[34] *People v. Lorenzo*, G.R. No. 184760, April 23, 2010, 619 SCRA 389, 400; *People v. Ong*, G.R. No. 175940, February 6, 2008, 544 SCRA 123, 132.

[35] *Cruz v. People*, G.R. No. 164580, February 6, 2009, 578 SCRA 147, 152-153.

[36] *People v. Dela Rosa*, G.R. No. 185166, January 26, 2011; *People v. Baga*, G.R. No. 189844, November 15, 2010.

In the instant case, the prosecution has failed to prove all the elements of the crime with moral certainty.

A careful perusal of the testimony of PO2 Laurel readily reveals that there is serious doubt as to the identity of the seller. In his testimony, PO2 Laurel stated that when the transaction took place at 6:30 p.m., he was inside a parked tricycle located seven (7) meters away from where the transaction took place. Significantly the transaction occurred behind a store and not along the road. Add to this the fact that it happened at dusk, making it harder to see. Considering all these, it is, therefore, highly improbable that PO2 Laurel actually saw accused-appellant. In fact, he testified that the poseur-buyer approached a "certain person" and that he only **assumed** it was accused-appellant to whom the poseur-buyer was talking, *viz*:

Q It is therefore safe to say that there is a distance of ten (10) to 15 meters between you and the person approached by the poseur buyer?
A Around seven (7) meters, mam.

Q At the time of the approach of your poseur buyer, he was just standing there outside of the road?
A Not at the side of the road, but behind the store.

Q This store was beside at the National Highway?
A Yes, mam.

Q At that time, there was still some day light?
A Yes, mam.

Q Nevertheless, the day light that was available at that time was not so bright anymore?
A No mam, but there was an electrical light in that area.

Q You were inside the cab of the tricycle, is that correct?
A Yes, mam.

Q PO3 Casas was also inside the cab together with you?
A Yes, mam.

Q Who was on the side that was nearest the road?
A PO3 Casas.

Q When you saw that poseur buyer approached the subject and it was not so bright anymore, you could only see that your poseur buyer approached a man?

A Yes, mam, the poseur buyer approached a certain person.

Q You assumed this man that the poseur buyer approached to be the subject Jojo Roble also known as Andrew Roble?

A Yes, mam, he was the one.

Q You stated that you had arranged with the poseur buyer to execute a pre-arranged signal by scratching of his head upon the completion of the transaction, is that right?

A Yes, mam.

Q And, it was the execution by this poseur buyer of that pre-arranged signal that prompted you and Police Officer Casas to rush towards the place where the poseur buyer and the subject were standing?

A Yes, mam.[37] (Emphasis supplied.)

Clearly, PO2 Laurel's testimony cannot establish with moral certainty the identity of the seller. It baffles this Court why the prosecution did not present the poseur-buyer as he would be the best person to identify the identity of the seller. No justifiable reason was submitted as to why Cuizon's testimony could not be presented.

Even more doubtful is the identity and integrity of the dangerous drug itself. In prosecutions for illegal sale of dangerous drugs, "[t]he existence of dangerous drugs is a condition *sine qua non* for conviction x x x."[38] Thus, it must be established that the substance bought during the buy-bust operation is the same substance offered in court. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[39]

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[37] TSN, March 7, 2005, pp. 6-7.

[38] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 654.

[39] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

In *Malillin v. People*,[40] the Court explained the importance of the chain of custody, to wit:

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would 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.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration,

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[40] *Id.* at 631-634.

tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

After a thorough review of the records of the instant case, this Court has serious doubts as to the identity of the drug in question. While a buy-bust operation is legal and has been proved to be an effective method of apprehending drug peddlers, due regard to constitutional and legal safeguards must be undertaken.

It is the duty of the Courts to ascertain if the operation was subject to any police abuse.[41]

In his Supplemental Brief, accused-appellant aptly points out certain points in the evidence of the prosecution that cast uncertainty on the identity of the drug in question.

At the outset, it must be pointed out that there is confusion as to when the plastic sachet in question was turned over by the poseur-buyer to PO3 Casas. During PO2 Laurel's direct examination, he testified that the plastic sachet was handed over by the poseur-buyer to PO3 Casas when they arrived at the police station.[42] But, on cross-examination, his story changed. He testified that the poseur-buyer handed the plastic sachet when his team tried to approach him after he gave the pre-arranged signal, *viz*:

Q It was already there at the Police Station that your poseur buyer handed the packet of *shabu* which he allegedly bought from the subject to your investigator?
A There at the buy bust area, the poseur buyer delivered to Casas the plastic packet of *shabu* he bought from the subject.

Q He gave that plastic sachet of *shabu* to Casas after you chased the accused, correct?
A No, mam, upon approaching the poseur buyer, he handed to Casas the plastic packet of *shabu*, then we ran after the subject and, likewise, PO3 Casas followed us.[43]

After receiving the plastic sachet, PO3 Casas then gave it to the investigator, SPO3 Awe. From here, the trail becomes vague

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[41] *People v. Baga*, *supra* note 35; citing *People v. Herrera*, G.R. No. 93728, August 21, 1995, 247 SCRA 433, 439; *People v. Tadepa*, G.R. No. 100354, May 26, 1995, 244 SCRA 339, 341.

[42] TSN, August 24, 2004, p. 7:

Q After observing that the accused had ran away, what did you and your group do?
A We chased him, but unfortunately, we did not catch him. We even looked for him, but we were not able to find him, we then went back to the station and our poseur buyer handed the *shabu* to PO3 Casas.

[43] TSN, March 7, 2005, pp. 6-7.

once again. The testimony of PO2 Laurel up to this point talks about a single plastic sachet, but the Request for Laboratory Examination[44] (Request) identifies not one (1) but two (2) plastic sachets. This contradictory fact was not explained in his testimony. Further, one Police Superintendent Agustin G. Lloveras, Jr. (P/Supt. Lloveras) signed the Request. P/Supt. Lloveras was never mentioned in PO2 Laurel's testimony. It is unclear as to who he is and as to how he was able to obtain the plastic sachets. Similarly, it is uncertain as to how the plastic sachets were transferred to P/Supt. Lloveras from SPO3 Awe. Again, PO2 Laurel's testimony is bereft of any details as to the chain of custody of the drugs at these critical points.

Furthermore, the Request also mentions that the plastic sachets were marked "ARJ 1-2." Yet again, PO2 Laurel's testimony is lacking as to who marked the plastic sachets and when it was done.

Moreover, the testimony of Medical Technologist Mendoza reveals certain anomalies in the handling of the plastic sachets as well. In his testimony, a certain PO3 Enriquez delivered the plastic sachets. The trail from P/Supt. Lloveras to PO3 Enriquez was also not explained by the prosecution. Further, the sachets were delivered to Medical Technologist Mendoza in an unsealed packet, *viz*:

Q Mr. Witness, when you received the specimens for examination, you received them attached to accompanying letter-request and already in bigger plastic packet. Is that correct?
A Yes, Ma'am.

Q Now, this bigger plastic packet was not sealed.
A No, Ma'am.

Q Only the two (2) smaller plastic packets inside them. Is that correct?
A No, Ma'am.[45]

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[44] Records, p. 6.

[45] TSN, February 7, 2005, pp. 14-15.

Obviously, the way the packets were delivered could make them easily susceptible to replacement or substitution. Medical Technologist Mendoza even attested that he had no knowledge as to who marked the plastic sachets since they arrived in his office already marked.

Clearly, the evidence presented by the prosecution is insufficient to prove that the plastic sachets of *shabu* allegedly seized from accused-appellant are the very same objects tested by the crime laboratory and offered in court as evidence. The chain of custody of the drugs is patently broken.

Similarly, the prosecution failed to follow the requisites found in Sec. 21 of the Implementing Rules and Regulations (IRR) of RA 9165, which outlines the post-procedure in taking custody of seized drugs, *viz*:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items x x x.

Even though non-compliance with Sec. 21 of the IRR is excusable, such cannot be relied upon when there is lack of any acceptable justification for failure to do so. In *People v. Lorenzo*,[46] citing *People v. Sanchez*,[47] the Court explained that "this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds."

In the instant case, no justifiable grounds were put forth by the prosecution for the procedural lapses. In his testimony, PO2 Laurel clearly stated that no inventory was made after he and his team obtained custody of the drugs. This is a patent violation of the aforementioned section. Citing *Zarraga v. People*,[48] the Court, in *People v. Lorenzo*, held that "the lack of inventory on the seized drugs create[s] reasonable doubt as to the identity of the *corpus delicti*."[49]

Parenthetically, no coordination with the Philippine Drug Enforcement Agency was made, in violation of Sec. 86(a) of the IRR of RA 9165.[50]

Summing up all these circumstances, it behooves this Court not to blindingly accept the flagrantly wanting evidence of the prosecution. Undoubtedly, the prosecution failed to meet the required quantum of evidence sufficient to support a conviction,

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[46] *Supra* note 33, at 402.

[47] G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[48] G.R. No. 162064, March 14, 2006, 484 SCRA 639, 647-650.

[49] *Supra* note 33, at 404.

[50] IRR of RA 9165, Sec. 86(a) Relationship/Coordination between PDEA and Other Agencies.—The PDEA shall be the lead agency in the enforcement of the Act while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of PDEA: Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; Provided, further, that, in any case, said agencies shall inform the PDEA of their anti-drug operations within twenty-four (24) hours from the time of actual custody of the suspects or seizure of said drugs and substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations.

in which case, the constitutional presumption of innocence prevails. As we have held, "When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right."[51]

WHEREFORE, the CA Decision dated July 14, 2009 in CA-G.R. CEB CR-H.C. No. 00746 affirming the RTC's judgment of conviction is *REVERSED* and *SET ASIDE*. Petitioner Andrew Roble is hereby *ACQUITTED* on ground of reasonable doubt and is accordingly ordered immediately released from custody unless he is being lawfully held for another offense.

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), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

EN BANC

[A.M. No. 08-19-SB-J. April 12, 2011]

ASSISTANT SPECIAL PROSECUTOR III ROHERMIA J. JAMSANI-RODRIGUEZ, *complainant*, *vs*. **JUSTICES GREGORY S. ONG, JOSE R. HERNANDEZ, and RODOLFO A. PONFERRADA, SANDIGANBAYAN,** *respondents*.

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[51] *Malillin v. People*, *supra* note 38, at 639.

SYLLABUS

1. **JUDICIAL ETHICS; JUSTICES; CHARGE OF SIMPLE MISCONDUCT; VARIANCE IN THE RESPONSIBILITIES OF EACH AND EVERY MEMBER OF THE DIVISION IS A SUFFICIENT JUSTIFICATION FOR THE DIFFERENTIATION IN THE INDIVIDUAL LIABILITIES; APPLIED.—** We hold to be not well taken the urging of Justice Ong that the penalty imposed upon him be similar to that meted upon Justice Hernandez. The variance in the responsibilities of respondent Justices as Members of their Division compel the differentiation of their individual liabilities. Justice Ong, as the Chairperson, was the head of the Division under the Internal Rules of the Sandiganbayan, being the most senior Member, and, as such, he possessed and wielded powers of supervision, direction, and control over the conduct of the proceedings of the Division. This circumstance alone provided sufficient justification to treat Justice Ong differently from the other respondents.

2. **ID.; ID.; ID.; ID.; THE IMPOSITION OF A HEAVIER PENALTY AGAINST THE CHAIRMAN OF THE DIVISION AND A LESSER PENALTY AGAINST THE OTHER MEMBERS THEREOF, PROPER; REASON.—** Moreover, we have noted in the Decision that in the exercise of his powers as Chairman of the Fourth Division, Justice Ong exuded an unexpectedly dismissive attitude towards the valid objections of the complainant, and steered his Division into the path of procedural irregularity; and wittingly failed to guarantee that proceedings of the Division that he chaired came within the bounds of substantive and procedural rules. To be sure, Justice Hernandez and Justice Ponferrada did not direct and control *how* the proceedings of the Division were to be conducted. Their not being responsible for the direction and control of the running of the Division and their having relied without malice on the Justice Ong's direction and control should not be reproved as much as Justice Ong's misconduct. Hence, their responsibility and liability as Members of the Division were properly diminished.

R E S O L U T I O N

BERSAMIN, *J*.:

We resolve: (*a*) the *Joint Motion for Reconsideration* dated September 14, 2010 filed by respondents Sandiganbayan Associate Justice Gregory S. Ong (Justice Ong) and Associate Justice Jose R. Hernandez (Justice Hernandez); and (*b*) the *Motion for Reconsideration (of the Honorable Court's Decision Dated 1 September)* dated September 15, 2010 of the complainant.

Both motions seek the reconsideration of the Decision rendered on August 24, 2010, albeit on different grounds.

Through the Decision, we found and held Justice Ong and Justice Hernandez liable for simple misconduct, and disposed against them and Associate Justice Rodolfo A. Ponferrada (Justice Ponferrada), as follows:

1. ASSOCIATE JUSTICE GREGORY S. ONG is ordered to pay a fine of ₱15,000.00, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely;

2. ASSOCIATE JUSTICE JOSE R. HERNANDEZ is admonished with a warning that a repetition of the same or similar offenses shall be dealt with more severely; and

3. ASSOCIATE JUSTICE RODOLFO A. PONFERRADA is warned to be more cautious about the proper procedure to be taken in proceedings before his court.[1]

A brief account of the factual antecedents is first given.

The complainant, then an Assistant Special Prosecutor III in the Office of the Special Prosecutor, filed an affidavit-complaint dated October 23, 2008 charging Justice Ong, Justice Hernandez and Justice Ponferrada, as the Members of the Fourth Division of the Sandiganbayan with: (*a*) grave misconduct, conduct unbecoming a Justice, and conduct grossly prejudicial to the interest of the service (grounded on their failing to hear cases as a collegial body during the scheduled sessions of the Fourth

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[1] Decision, p. 26.

Division held in Davao City on April 24-28, 2006, with Justice Ong hearing cases by himself and Justice Hernandez and Justice Ponferrada hearing other cases together; and on their having unreasonably flexed their judicial muscle when she objected to the procedure); (*b*) falsification of public documents (grounded on their issuance of orders relative to the hearings in Davao City, signed by all three of them, that made it appear as if all of them had been present during the particular hearing acting as a collegial body, when in truth they were not); (*c*) improprieties in the hearing of cases that amounted to gross abuse of judicial authority and grave misconduct (grounded on Justice Ong and Justice Hernandez's making the following intemperate and discriminatory utterances during the hearings of their Division in Cebu City sometime in September 2006), to wit:

(a) 'We are playing Gods here, we will do what we want to do, your contempt is already out, we fined you eighteen thousand pesos, even if you will appeal, by that time I will be there, Justice of the Supreme Court.'[2];

(b) 'You are better than Director Somido? Are you better than Director Chua? Are you here to supervise Somido? Your office is wasting funds for one prosecutor who is doing nothing.'[3];

(c) 'Just because your son is always nominated by the JBC to Malacañang, you are acting like that! Do not forget that the brain of the child follows that of their (sic) mother[4]; and

(d) Justice Ong often asked lawyers from which law schools they had graduated, and frequently inquired whether the law school in which Justice Hernandez had studied and from which he had graduated was better than his (Justice Ong's) own *alma mater*.

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[2] Utterance made by Justice Ong in open court against the complainant.

[3] Utterance made by Justice Hernandez in open court against Prosecutor Hazelina Tujan-Militante,who was then merely observing the trial proceedings from the gallery.

[4] Utterance made by Justice Hernandez in open court against Atty. Pangalangan, father of former U.P. College of Law Dean Raul C. Pangalangan.

and (*d*) manifest partiality and gross ignorance of the law (grounded on the fact that Criminal Case No. 25801, entitled *People v. Puno,* was dismissed upon a demurrer to evidence filed by the accused upon a finding that the assailed contracts subject of the criminal case had never been perfected contrary to the evidence of the Prosecution, the dismissal order being signed by all three respondents).

In the Decision of August 24, 2010, we explained as follows:

A.

Respondents' Violation of the Provisions of PD 1606 and Revised Internal Rules of the Sandiganbayan

x x x x x x x x x

We find that the procedure adopted by respondent Justices for their provincial hearings was in blatant disregard of PD 1606, as amended, the *Rules of Court*, and the *Revised Internal Rules of the Sandiganbayan*. Even worse, their adoption of the procedure arbitrarily denied the benefit of a hearing before a *duly constituted* Division of the Sandiganbayan to all the affected litigants, including the State, thereby rendering the integrity and efficacy of their proceedings open to serious challenge on the ground that a hearing before a *duly constituted* Division of the Sandiganbayan was of the very essence of the constitutionally guaranteed right to due process of law.

Judges are not common individuals whose gross errors men forgive and time forgets. They are expected to have more than just a modicum acquaintance with the statutes and procedural rules. For this reason alone, respondent Justices' adoption of the irregular procedure cannot be dismissed as a mere deficiency in prudence or as a lapse in judgment on their part, but should be treated as simple misconduct, which is to be distinguished from either gross misconduct or gross ignorance of the law. The respondent Justices were not liable for gross misconduct — defined as the transgression of some established or definite rule of action, more particularly, *unlawful behavior* or *gross negligence*, or the *corrupt or persistent violation of the law or disregard of well-known legal rules* — considering that the explanations they have offered herein, which the complainant did not refute, revealed that they strove to maintain their collegiality by holding their separate hearings within sight and hearing distance

of one another. Neither were they liable for gross ignorance of the law, which must be based on reliable evidence to show that the act complained of was *ill-motivated*, *corrupt*, or *inspired by an intention to violate the law*, or *in persistent disregard of well-known legal rules*; on the contrary, none of these circumstances was attendant herein, for the respondent Justices have convincingly shown that they had not been ill-motivated or inspired by an intention to violate any law or legal rule in adopting the erroneous procedure, but had been seeking, instead, to thereby expedite their disposition of cases in the provinces.

Nonetheless, it remains that the respondent Justices did not ensure that their proceedings accorded with the provisions of the law and procedure. Their insistence that they adopted the procedure in order to expedite the hearing of provincial cases is not a sufficient reason to entirely exonerate them, even if no malice or corruption motivated their adoption of the procedure. They could have seen that their procedure was flawed, and that the flaw would prevent, not promote, the expeditious disposition of the cases by precluding their valid adjudication due to the nullifying taint of the irregularity. They knew as well that the need to expedite their cases, albeit recommended, was not the chief objective of judicial trials. As the Court has reminded judges in *State Prosecutors v. Muro, viz*:

> **Although a speedy determination of an action or proceeding implies a speedy trial, it should be borne in mind that speed is not the chief objective of a trial. Careful and deliberate consideration for the administration of justice is more important than a race to end the trial. A genuine respect for the rights of all parties, thoughtful consideration before ruling on important questions, and a zealous regard for the just administration of law are some of the qualities of a good trial judge, which are more important than a reputation for hasty disposal of cases.**
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> x x x x x x x x x
>
> What is required on the part of judges is objectivity. An independent judiciary does not mean that judges can resolve specific disputes entirely as they please. There are both implicit and explicit limits on the way judges perform their role. Implicit limits include accepted legal values and the explicit limits are substantive and procedural rules of law.

> **The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinate to the "primordial necessity of order in the social life."**

Relevantly, we do not consider the respondent Justices' signing of the orders issued during the flawed proceedings as a form of falsification or dishonesty, in that they thereby made it appear that they had all been physically present when the truth was different. Such act merely ensued from the flawed proceedings and cannot be treated as a separate offense.

B.
Unbecoming Conduct of Justice Ong and Justice Hernandez

The Court approves the Court Administrator's finding and recommendation that no evidence supported the complainant's charge that Justice Ong and Justice Hernandez had uttered the improper and intemperate statements attributed to them.

A review of the transcripts of the stenographic notes for the hearings in which the offensive statements were supposedly uttered by them has failed to substantiate the complainant's charge. In the absence of a clear showing to the contrary, the Court must accept such transcripts as the faithful and true record of the proceedings, because they bear the certification of correctness executed by the stenographers who had prepared them.

Even so, Justice Ong and Justice Hernandez admitted randomly asking the counsels appearing before them from which law schools they had graduated, and their engaging during the hearings in casual conversation about their respective law schools. They thereby publicized their professional qualifications and manifested a lack of the requisite humility demanded of public magistrates. Their doing so reflected a vice of self-conceit. We view their acts as bespeaking their lack of judicial temperament and decorum, which no judge worthy of the judicial robes should avoid especially during their performance of judicial functions. They should not exchange banter

or engage in playful teasing of each other during trial proceedings (no matter how good-natured or even if meant to ease tension, as they want us to believe). Judicial decorum demands that they behave with dignity and act with courtesy towards all who appear before their court.

Indeed, Section 6, Canon 6 of the *New Code of Judicial Conduct for the Philippine Judiciary* clearly enjoins that:

> Section 6. **Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity.** Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

We point out that publicizing professional qualifications or boasting of having studied in and graduated from certain law schools, no matter how prestigious, might have even revealed, on the part of Justice Ong and Justice Hernandez, their bias *for* or *against* some lawyers. Their conduct was impermissible, consequently, for Section 3, Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary*, demands that judges avoid situations that may reasonably give rise to the suspicion or appearance of favoritism or partiality in their personal relations with individual members of the legal profession who practice regularly in their courts.

Judges should be dignified in demeanor, and refined in speech. In performing their judicial duties, they should not manifest bias or prejudice by word or conduct towards any person or group on irrelevant grounds. It is very essential that they should live up to the high standards their noble position on the Bench demands. Their language must be guarded and measured, lest the best of intentions be misconstrued. In this regard, Section 3, Canon 5 of the *New Code of Judicial Conduct for the Philippine Judiciary*, mandates judges to carry out judicial duties with appropriate consideration for *all* persons, such as the parties, witnesses, lawyers, court staff, and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

In view of the foregoing, Justice Ong and Justice Hernandez were guilty of unbecoming conduct, which is defined as *improper* performance. Unbecoming conduct "applies to a broader range of

transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method."

C.

Respondent Justices Not Guilty of Manifest Partiality

The charge of manifest partiality for issuing the resolution granting the demurrer to evidence of the accused in Criminal Case No. 25801 is dismissed. As already mentioned, this Court upheld the assailed resolution on June 5, 2006 in G.R. No. 171116 by declaring the petition of the Office of the Special Prosecutor assailing such dismissal to have "failed to sufficiently show that the Sandiganbayan had committed any reversible error in the questioned judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction."

In their *Joint Motion for Reconsideration*, Justice Ong and Justice Hernandez make it clear that they:

> [A]ccept with all humility, and therefore, will no longer contest the Honorable Court's finding that the proceedings they had adopted in their provincial hearings fell short of what the provisions of the law and rules require. For such shortcoming, respondents Ong and Hernandez can only express their regret and apology.

Nonetheless, Justice Ong and Justice Hernandez pray for exoneration, contending that they are not liable for simple misconduct despite the irregularity of their conduct for the simple reason that, as the Decision has indicated, they "have not been ill-motivated or inspired by an intention to violate any law or legal rules in adopting the erroneous procedure, but had been seeking, instead, to thereby expedite their disposition of cases in the provinces;" their actions were not willful in character or motivated by a "premeditated, obstinate or intentional purpose"; or even if their actions might be "irregular, wrongful, or improper," such could not be characterized as simple misconduct necessitating administrative sanction.

Also, Justice Ong and Justice Hernandez posit that they cannot be made accountable for unbecoming conduct because they admittedly posed questions on the law schools of origin of the

counsel appearing before them; that their propounding the queries, *per se*, did not justify a finding of unbecoming conduct on their part considering that they thereby never derided any law school or belittled the capabilities of lawyers on the basis of their school affiliations, nor exhibited bias for or against any lawyer based on their *alma mater*.

In the alternative, Justice Ong prays that the sanction imposed upon him be made equal to that meted on Justice Hernandez. He "implores the Honorable Court to re-examine the propriety of imposing a different and heavier penalty against him and take into due consideration its own pronouncement in its decision that 'the Sandiganbayan is a collegial court,' and 'in a collegial court, the members act on the basis of consensus or majority rule.'"

For her part, the complainant insists that respondent Justices be found guilty of all administrative charges made against them; and that the penalties or chastisement be increased to be commensurate to their infractions.

Ruling

Finding the arguments of the complainant to be matters that the Court fully dealt with and discussed in the Decision, and there being no other substantial matters raised by her, we deny her *Motion for Reconsideration (of the Honorable Court's Decision Dated 1 September)*.

We deny the plea of Justice Ong and Justice Hernandez for complete exoneration, considering what we held in the Decision, which we reiterate hereunder, as follows:

> Respondent Justices cannot lightly regard the legal requirement for all of them to sit together as members of the Fourth Division "in the *trial* and *determination* of a case or cases assigned thereto." The information and evidence upon which the Fourth Division would base any decisions or other judicial actions in the cases *tried* before it must be made *directly* available to each and every one of its members during the proceedings. This necessitates the *equal* and *full* participation of *each* member in the trial and adjudication of their

cases. It is simply not enough, therefore, that the three members of the Fourth Division were within hearing and communicating distance of one another at the hearings in question, as they explained in hindsight, because even in those circumstances not *all* of them sat together *in session*.

Indeed, the ability of the Fourth Division to function *as a collegial body* became impossible when not all of the members sat together during the trial proceedings. The internal rules of the Sandiganbayan spotlight an instance of such impossibility. Section 2, Rule VII of the *Revised Internal Rules of the Sandiganbayan* expressly requires that rulings on oral motions made or objections raised *in the course of* the trial proceedings or hearings are be made by the Chairman of the Division. Obviously, the rule cannot be complied with because Justice Ong, the Chairman, did not sit in the hearing of the cases heard by the other respondents. Neither could the other respondents properly and promptly contribute to the rulings of Justice Ong in the hearings before him.

Moreover, the respondents' non-observance of collegiality contravened the very purpose of trying criminal cases cognizable by Sandiganbayan before a Division of *all* three Justices. Although there are criminal cases involving public officials and employees triable before single-judge courts, PD 1606, as amended, has *always* required a Division of three Justices (not one or two) to try the criminal cases cognizable by the Sandiganbayan, in view of the accused in such cases holding higher rank or office than those charged in the former cases. The three Justices of a Division, rather than a single judge, are naturally expected to exert keener judiciousness and to apply broader circumspection in trying and deciding such cases. The tighter standard is due in part to the fact that the review of convictions is elevated to the Supreme Court generally *via* the discretionary mode of petition for review on *certiorari* under Rule 45, *Rules of Court*, which eliminates issues of fact, instead of *via* ordinary appeal set for the former kind of cases (whereby the convictions still undergo intermediate review before ultimately reaching the Supreme Court, if at all).

In *GMCR, Inc. v. Bell Telecommunication Philippines, Inc.*, the Court delved on the nature of a collegial body, and how the act of a single member, though he may be its head, done without the participation of the others, cannot be considered the act of the collegial body itself. There, the question presented was whether Commissioner Simeon Kintanar, as chairman of the National

Telecommunications Commission (NTC), could alone act in behalf of and bind the NTC, given that the NTC had two other commissioners as members. The Court ruled:

> First. We hereby declare that the NTC is a collegial body **requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein**. Corollarily, **the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.**
>
> Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, **and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC.** When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 146 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 146, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime.

The foregoing observations made in *GMCR, Inc.* apply to the situation of respondent Justices as members of the Fourth Division. It is of no consequence, then, that no malice or corrupt motive impelled respondent Justices into adopting the flawed procedure. As responsible judicial officers, they ought to have been well aware of the indispensability of collegiality to the valid conduct of their trial proceedings.

As to the argument of Justice Ong and Justice Hernandez against this Court's finding of unbecoming conduct on their part, the matter has been fully addressed in the Decision of August 24, 2010.

We hold to be not well taken the urging of Justice Ong that the penalty imposed upon him be similar to that meted upon Justice Hernandez.

The variance in the responsibilities of respondent Justices as Members of their Division compel the differentiation of their individual liabilities. Justice Ong, as the Chairperson, was the head of the Division under the Internal Rules of the Sandiganbayan, being the most senior Member, and, as such, he possessed and wielded powers of supervision, direction, and control over the conduct of the proceedings of the Division. This circumstance alone provided sufficient justification to treat Justice Ong differently from the other respondents.

Moreover, we have noted in the Decision that in the exercise of his powers as Chairman of the Fourth Division, Justice Ong exuded an unexpectedly dismissive attitude towards the valid objections of the complainant, and steered his Division into the path of procedural irregularity; and wittingly failed to guarantee that proceedings of the Division that he chaired came within the bounds of substantive and procedural rules. To be sure, Justice Hernandez and Justice Ponferrada did not direct and control *how* the proceedings of the Division were to be conducted. Their not being responsible for the direction and control of the running of the Division and their having relied without malice on the Justice Ong's direction and control should not be reproved as much as Justice Ong's misconduct. Hence, their responsibility and liability as Members of the Division were properly diminished.

WHEREFORE, the *Motion for Reconsideration (of the Honorable Court's Decision Dated 1 September)* dated September 15, 2010 of complainant Assistant Special Prosecutor III Rohermia J. Jamsani-Rodriguez; and the *Joint Motion for Reconsideration* dated September 14, 2010 of Associate Justice Gregory S. Ong and Associate Justice Jose R. Hernandez are denied for lack of merit.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Brion, del Castillo, Villarama, Jr., and *Sereno, JJ.,* concur.

Nachura, J., maintains his original dissent.

Abad, J., maintains his dissenting vote.

Mendoza, J., maintains his earlier vote.

Leonardo-de Castro and *Peralta, JJ.,* no part.

Perez, J., no part. Acted on matter as Court Administrator.

EN BANC

[A.M. OCA IPI No. 10-177-CA-J. April 12, 2011]

RE: COMPLAINT OF CONCERNED MEMBERS OF CHINESE GROCERS ASSOCIATION AGAINST JUSTICE SOCORRO B. INTING OF THE COURT OF APPEALS

SYLLABUS

1. CIVIL LAW; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); NOTICE AND REPLACEMENT OF LOST DUPLICATE CERTIFICATE; THE PETITION FOR ISSUANCE OF A NEW DUPLICATE CERTIFICATE MAY BE FILED BY A PERSON WHO IS NOT THE OWNER OF THE PROPERTY PROVIDED HE HAS INTEREST IN THE PROPERTY.— The applicable law is Section 109 of Presidential Decree (P.D.) No. 1529 (Property Registration Decree), which states: Section 109. *Notice and replacement of lost duplicate certificate.* — x x x. **Upon the petition of the registered owner or <u>other person in interest</u>**, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such

for all purposes of this decree. The above-quoted provision clearly allows a person who is not the owner of the property to file the petition for a new duplicate certificate, provided the person has interest in the property.

2. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; A VALIDLY NOTARIZED DEED OF ABSOLUTE SALE IS PRESUMED REGULAR AND SHALL BE UPHELD, IF NOT CONTRADICTED BY CLEAR AND CONVINCING EVIDENCE.—** The next logical question is — was dela Cruz a person in interest to the subject property? We find that he was, given the fact that he had what appeared to be a validly notarized Deed of Absolute Sale over the subject property in his favor. As a public document, the subject Deed of Absolute Sale has in its favor the presumption of regularity. To contradict it, one must present evidence that is clear and convincing; otherwise, the document should be upheld. In the present case, however, no one from CGA appeared during the proceedings to oppose dela Cruz's petition or to bring to Justice Inting's attention the fact that Ang Bio was already dead at the time the deed of sale was allegedly executed. Given the lack of any evidence to assume otherwise, Justice Inting correctly relied on the notarized Deed of Sale's presumption of regularity.

3. **CIVIL LAW; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); PETITION FOR THE ISSUANCE OF A NEW OWNER'S DUPLICATE COPY OF A CERTIFICATE OF TITLE; OBJECTIVE; THE LAND REGISTRATION COURT HAS NO JURISDICTION TO PASS UPON THE QUESTION OF ACTUAL OWNERSHIP OF THE LAND COVERED BY THE LOST OWNER'S DUPLICATE COPY OF THE CERTIFICATE OF TITLE.—** As for the complainants' allegation that Justice Inting had the duty to inquire into the details of the alleged sale, we reiterate that in a petition for the issuance of a new owner's duplicate copy of a certificate of title, the RTC, acting only as a land registration court with limited jurisdiction, **has no jurisdiction to pass upon the question of actual ownership of the land covered by the lost owner's duplicate copy of the certificate of title.** Questions involving the issue of ownership have to be threshed out in a separate suit where the trial court will conduct a full-blown hearing with the parties presenting their respective evidence to prove ownership over the subject realty. After all,

the objective of a petition for the issuance of a new owner's duplicate copy is merely to determine two things — (1) that the owner's duplicate copy of the certificate of title was actually lost; and (2) that the person who filed the petition has sufficient interest in the property covered by the title to acquire a copy of the same. It was thus not for Justice Inting to question dela Cruz on the specifics of the purported sale (*i.e.*, why the land was sold to dela Cruz at such a low price, whether dela Cruz paid the applicable taxes for the transfer of the property, *etc.*) during these proceedings.

4. **JUDICIAL ETHICS; JUDGES; CHARGE OF MISCONDUCT; THE COMPLAINANT HAS THE BURDEN OF PROVING THE ALLEGATIONS IN THE COMPLAINT WITH SUBSTANTIAL EVIDENCE; BARE ALLEGATIONS OF MISCONDUCT CANNOT PREVAIL OVER THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS.—** In administrative proceedings, the complainant has the burden of proving the allegations in the complaint with substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. We set the applicable standard in deciding cases involving accusations of misconduct leveled at judges in *Concerned Lawyers of Bulacan v. Villalon-Pornillos*, where we said: The burden of substantiating the charges in an administrative proceeding against court officials and employees falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. **In the absence of evidence to the contrary, the presumption that respondent regularly performed her duties will prevail.** Moreover, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. In fact, an administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent stands to face the sanction of dismissal and/or disbarment. The Court does not thus give credence to charges based on mere suspicion and speculation. Apart from the questionable nature of the Deed of Absolute Sale in dela Cruz's favor, brought to light only now upon the presentation of the Certificate of

Death, the complainants have not presented any other evidence to support the charge of misconduct leveled against Justice Inting.

5. **REMEDIAL LAW; EVIDENCE; A MERE PHOTOCOPY OF THE CERTIFICATE OF DEATH IS INADMISSIBLE AS PROOF, AND CONSIDERED A MERE SCRAP OF PAPER WITHOUT ANY EVIDENTIARY VALUE.—** Significantly, however, the complainants attached a *mere photocopy* of Ang Bio's Certificate of Death to their letter complaint. While the Certificate of Death is indeed a public document, to prove its contents, there is a need to present a certified copy of this document, issued by the public officer in custody of the original document. Since the Certificate of Death is not a certified copy, it is inadmissible as proof, and is considered a mere scrap of paper without any evidentiary value.

6. **JUDICIAL ETHICS; JUDGES; ABSENT EVIDENCE OF BAD FAITH, ILL-MOTIVE OR ERROR IN ISSUING THE ASSAILED ORDER, THE ADMINISTRATIVE COMPLAINT AGAINST A JUDGE SHALL BE DISMISSED.—** Given the lack of any evidence to prove that Justice Inting acted with any bad faith or ill-motive in acting on the petition, or even committed any error in issuing the assailed order, we dismiss the complaint against her. As we stated in *Tan Tiac Chiong v. Cosico*: When an administrative charge against a Judge or court personnel has no basis whatsoever in fact or in law, this Court will not hesitate to protect them against any groundless accusation that trifles with judicial processes. In short, this Court will not shirk from its responsibility of imposing discipline upon all employees of the judiciary, but neither will it hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.

R E S O L U T I O N

BRION, *J*.:

We pass upon the unsigned letter complaint for administrative action and disbarment sent by the Concerned Members of Chinese Grocers Association (CGA) to the Office of Chief Justice Corona

against Court of Appeals Justice Socorro B. Inting on November 25, 2010 for gross neglect of judicial duties in deciding Case No. P-08-132 GLRO CA.D Record No. 84, entitled "*In Re: Petition for Issuance of a New Owner's Duplicate Copy of Transfer Certificate of Title No. 42417 of the Registry of Deeds of Manila"* while she was still Presiding Judge of the Regional Trial Court, Branch IV, Manila. Specifically, the complainants allege that Justice Inting acted with gross negligence when she turned a blind eye to the suspicious circumstances surrounding the petitioner in the case, Romualdo dela Cruz, and granted the petition.

Factual Antecedents

The CGA is the owner of a parcel of land with an area of 315 square meters located in Manila, registered under Transfer Certificate of Title (TCT) No. 42417.

Sometime in 2008, Romualdo dela Cruz (dela Cruz) filed a petition for the issuance of a new owner's duplicate copy of TCT No. 42417, claiming that the old owner's duplicate copy had been misplaced. This petition was assigned to the sala of then Judge Inting, presiding Judge of Branch IV, RTC Manila.

In the petition, dela Cruz claimed that: (a) the Office of the Register of Deeds had already been notified of the loss through an Affidavit of Loss; (b) TCT No. 42417 issued in the name of the CGA is still valid and subsisting; (c) copies of the Notice of Hearing have been duly posted, as evidenced by the Sheriff's Certificate of Posting; and (d) **dela Cruz's interest in filing this petition is based on his right as a vendee of the property**, as evidenced by the **Deed of Absolute Sale dated August 19, 2008**, allegedly executed between CGA, represented by Ang E. Bio, and dela Cruz.[1]

On June 16, 2009, Justice Inting issued an order granting dela Cruz's petition. The dispositive portion of this Order stated:

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[1] RTC Order dated June 16, 2009.

WHEREFORE, the Register of Deeds of Manila is hereby ordered upon payment of the prescribed fees of his office to **issue a new owner's duplicate of Transfer Certificate of Title No. 42417 in lieu of the lost one** which is hereby cancelled and declared of no further force and effect and to annotate on said title a memorandum of the issuance of a new owner's copy thereof in lieu of the lost one upon Order of the Court and to deliver said new owner's copy of the title to the petitioner or his counsel or duly authorized representative provided that **such new owner's copy of the title to be issued shall be made subject to the same terms and conditions as the original** thereof and that no document or transaction registered or pending registration in his office shall be adversely affected thereby.

SO ORDERED.

Since no motion for reconsideration or notice of appeal was filed challenging Justice Inting's June 16, 2009 Order within the reglementary period provided by law, the order became final and executory, and the new owner's duplicate title was given to dela Cruz.

The Letter Complaint

In their letter complaint dated November 15, 2010, the Concerned Members of CGA claimed that Justice Inting acted with gross neglect when she granted dela Cruz's petition for the issuance of a new owner's duplicate copy of TCT No. 42417. To recall, dela Cruz filed the petition as the alleged vendee of the property. However, the complainants point out that **the Deed of Absolute Sale dated <u>August 15, 2008</u>,** the basis for dela Cruz's interest and right to file the petition, should have aroused Justice Inting's suspicion as **it was allegedly signed on behalf of CGA by Ang E. Bio**, **who died on <u>August 28, 2001</u>**. The complainants also found it suspicious that Justice Inting did not question dela Cruz on the particulars of the sale — *i.e*, what the basis was of Bio's authority to represent CGA in the sale, whether dela Cruz had paid the applicable taxes in relation to the alleged sale, and why the land was sold for only ₱5,500,000.00 when it was worth at least ₱50 million — before granting the petition. The complainants further faulted Justice

Inting for not asking dela Cruz why he, and not CGA, filed the petition.

Justice Inting's Comment

On December 7, 2010, the Court *en Banc* issued a resolution requiring Justice Inting to comment on the letter complaint within ten (10) days from notice of the resolution.

Responding to our Order, Justice Inting filed a letter with the Court on January 28, 2011 asking for an additional thirty (30) days to file her comment. The Court *en Banc* resolved to grant this request in its February 1, 2011 resolution.

In her comment filed on February 23, 2011, Justice Inting averred that there was nothing suspicious in dela Cruz filing the petition as a vendee since Section 109 of Presidential Decree No. 1529 (Property Registration Decree) allows another person in interest to file a petition for the issuance of a new owner's duplicate title. She further explained that on May 8, 2009, the Acting Chief of the Clerks of Court Division issued a Notice of Hearing addressed to dela Cruz, the Register of Deeds of Manila and the CGA, setting the case for hearing on June 3, 2009. The court's process server also posted this Notice of Hearing on May 13, 2009 at three conspicuous public places in Manila. However, **no representative of CGA appeared to participate in the proceedings or oppose the petition at the initial hearing on June 3, 2009.** Accordingly, Justice Inting allowed dela Cruz to present his evidence *ex-parte* before Atty. Cheryl Morales, the Chief of the Clerks of Court Division of the Land Registration Authority. Based on the evidence presented, consisting of the notarized Deed of Absolute Sale between CGA and dela Cruz, and the Affidavit of Loss registered with the Register of Deeds and annotated at the back of the original title in the possession of the Register of Deeds of Manila, and given CGA's lack of opposition, Justice Inting granted the petition.

Justice Inting further emphasized that she did not transfer title over the land to dela Cruz; rather, **she merely issued an order granting the issuance of a new owner's duplicate copy of TCT No. 42417, with the same terms and conditions as the original**. She also denied the complainants' claim that she

knew dela Cruz prior to this case, stressing the fact that she only met dela Cruz when he appeared before her court with his attorney to comply with the petition's jurisdictional requirements.

Justice Inting also questioned the complainants' failure to take the necessary remedial actions against the order, such as filing a petition for relief of judgment within the reglementary period, as well as their failure to file any criminal action against dela Cruz, the instigator of the alleged fraudulent sale.

OUR RULING

The only issue we have to resolve is whether Justice Inting, in granting dela Cruz's petition, is guilty of misconduct. To answer this question, we examine the procedure in petitions for the issuance of new duplicate certificates of title.

The applicable law is Section 109 of Presidential Decree (P.D.) No. 1529 (Property Registration Decree), which states:

> Section 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or **other person in interest** and registered.
>
> **Upon the petition of the registered owner or other person in interest**, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

The above-quoted provision clearly allows a person who is not the owner of the property to file the petition for a new duplicate certificate, provided the person has interest in the property.

The next logical question is — was dela Cruz a person in interest to the subject property? We find that he was, given the fact that he had what appeared to be a validly notarized Deed of Absolute Sale over the subject property in his favor. As a public document, the subject Deed of Absolute Sale has in its favor the presumption of regularity. To contradict it, one must present evidence that is clear and convincing; otherwise, the document should be upheld.[2]

In the present case, however, no one from CGA appeared during the proceedings to oppose dela Cruz's petition or to bring to Justice Inting's attention the fact that Ang Bio was already dead at the time the deed of sale was allegedly executed. Given the lack of any evidence to assume otherwise, Justice Inting correctly relied on the notarized Deed of Sale's presumption of regularity.

As for the complainants' allegation that Justice Inting had the duty to inquire into the details of the alleged sale, we reiterate that in a petition for the issuance of a new owner's duplicate copy of a certificate of title, the RTC, acting only as a land registration court with limited jurisdiction, **has no jurisdiction to pass upon the question of actual ownership of the land covered by the lost owner's duplicate copy of the certificate of title.**[3] Questions involving the issue of ownership have to be threshed out in a separate suit where the trial court will conduct a full-blown hearing with the parties presenting their respective evidence to prove ownership over the subject realty.[4] After all, the objective of a petition for the issuance of a new owner's duplicate copy is merely to determine two things — (1) that the owner's duplicate copy of the certificate of title was actually

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[2] *Ceballos v. Intestate Estate of Mercado*, G.R. No. 155856, May 28, 2004.

[3] *Macabalo-Bravo v. Macabalo,* G.R. No. 144099, September 26, 2005, 471 SCRA 60; *Rexlon Realty Group, Inc. v. Court of Appeals,* G.R. No. 128412, March 15, 2002, 379 SCRA 306.

[4] *Heirs of Susana De Guzman Tuazon v. Court of Appeals*, G.R. No. 125758, January 20, 2004, 420 SCRA 219, 227-228.

lost; and (2) that the person who filed the petition has sufficient interest in the property covered by the title to acquire a copy of the same. It was thus not for Justice Inting to question dela Cruz on the specifics of the purported sale (*i.e.*, why the land was sold to dela Cruz at such a low price, whether dela Cruz paid the applicable taxes for the transfer of the property, *etc*.) during these proceedings.

In administrative proceedings, the complainant has the burden of proving the allegations in the complaint with substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[5] We set the applicable standard in deciding cases involving accusations of misconduct leveled at judges in *Concerned Lawyers of Bulacan v. Villalon-Pornillos*, where we said:

> The burden of substantiating the charges in an administrative proceeding against court officials and employees falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. **In the absence of evidence to the contrary, the presumption that respondent regularly performed her duties will prevail.** Moreover, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. In fact, an administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent stands to face the sanction of dismissal and/or disbarment. The Court does not thus give credence to charges based on mere suspicion and speculation.[6]

Apart from the questionable nature of the Deed of Absolute Sale in dela Cruz's favor, brought to light only now upon the presentation of the Certificate of Death, the complainants have not presented any other evidence to support the charge of misconduct leveled against Justice Inting.

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[5] *Ocenar v. Mabutin*, A.M. No. MTJ-05-1582, February 28, 2005, *citing Montes v. Mallare*, A.M. No. MTJ-04-1528, February 6, 2004, 422 SCRA 309, 315.

[6] A.M. No. RTJ-09-2183, July 07, 2009.

Significantly, however, the complainants attached a *mere photocopy* of Ang Bio's Certificate of Death to their letter complaint. While the Certificate of Death is indeed a public document, to prove its contents, there is a need to present a certified copy of this document, issued by the public officer in custody of the original document.[7] Since the Certificate of Death is not a certified copy, it is inadmissible as proof, and is considered a mere scrap of paper without any evidentiary value.

Given the lack of any evidence to prove that Justice Inting acted with any bad faith or ill-motive in acting on the petition, or even committed any error in issuing the assailed order, we dismiss the complaint against her. As we stated in *Tan Tiac Chiong v. Cosico*:[8]

> When an administrative charge against a Judge or court personnel has no basis whatsoever in fact or in law, this Court will not hesitate to protect them against any groundless accusation that trifles with judicial processes. In short, this Court will not shirk from its responsibility of imposing discipline upon all employees of the judiciary, but neither will it hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.

WHEREFORE, premises considered, the Court *RESOLVES* to *DISMISS* the administrative complaint against Justice Socorro B. Inting, Justice of the Court of Appeals, Cebu, for lack of merit.

SO ORDERED.

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

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[7] Rules of Court, Rule 130, Section 7.

[8] A.M. No. CA-02-33, July 31, 2002.

EN BANC

[A.M. No. P-10-2767. April 12, 2011]
(Formerly AM OCA IPI 08-2905-P)

ANTONIO EXEQUIEL A. MOMONGAN, *complainant, vs.* **PRIMITIVO A. SUMAYO, Clerk III and ARIEL A. MOMONGAN, Process Server,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE ACT OF INTENTIONALLY MAKING A FALSE STATEMENT ON ANY MATERIAL FACT IN SECURING ONE'S APPOINTMENT AMOUNTS TO DISHONESTY.—** Respondent's failure to adduce documentary proof of his civil service eligibility and of his graduation from the University of Visayas, Cebu indicates that any information he may divulge or present would be detrimental to his cause. Inevitably, the Court is led to the conclusion that, contrary to his representation, he was neither a college graduate nor did he pass the requisite civil service exam. In the aforementioned Report and Recommendation, the investigating judge quoted excerpts of the hearing on November 22, 2010 during which respondent finally and unqualifiedly admitted that he does not have a college diploma as he did not graduate. It bears particularly noting that despite the investigating judge's assurance that all respondent needed to have the administrative case against him dropped was to secure a certification from the CSC, respondent failed to do so. Clearly, respondent misrepresented his qualifications as to his educational attainment and eligibility for government service. This misrepresentation amounts to plain and simple dishonesty which, in this case, refers to the act of intentionally making a false statement on any material fact in securing one's appointment. It is a serious offense reflective of a person's character and the moral decay he suffers from, virtually destroying all honor, virtue and integrity. It is a malevolent act that has no place in the judiciary. No other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary.

2. ID.; ID.; ID.; DISHONESTY AND FALSIFICATION OF A PUBLIC DOCUMENT; CLASSIFIED AS GRAVE OFFENSES PUNISHABLE BY DISMISSAL EVEN IF FIRST OFFENSE.— Section 52, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) and other pertinent Civil Service Laws classify dishonesty and falsification of a public document as grave offenses such that even the first offense of this nature is already punishable by dismissal from the service. *Apropos* is this Court's counsel in *Aldecoa-Delorino v. Remigio-Versoza* on how it views, and intends to deal with such acts of dishonesty, thus: Let this case serve as a warning to all court personnel that the Court, in the exercise of its administrative supervision over all lower courts and their personnel, will not hesitate to enforce the full extent of the law in disciplining and purging from the Judiciary all those who are not befitting the integrity and dignity of the institution, even if it would mean their dismissal from the service despite their length of service. Any act of dishonesty, misrepresentation, or falsification done by a court employee that may lead to moral decadence shall be dealt with severely.

D E C I S I O N

PER CURIAM:

Primitivo A. Sumayo (respondent), Clerk III of Branch 10 of the Regional Trial Court (RTC) of Cebu City, was charged with Gross Dishonesty and Falsification of Public Document by Antonio Exequiel A. Momongan (complainant) by letter of October 11, 2007[1] which was forwarded by RTC Branch 58 Judge Gabriel T. Ingles.[2] He was similarly charged, in an undated anonymous letter,[3] which was forwarded by the Deputy Ombudsman (Visayas)[4] to the Court. Another court employee,

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[1] *Rollo,* pp. 7-8.

[2] *Id.* at 6.

[3] *Id.* at 18-20 exclusive of annexes.

[4] *Id.* at 2.

Ariel Momongan (Ariel), Process Server in the RTC, Office of the Clerk of Court (OCC), Cebu City was also similarly faulted. The complaint against Ariel was, after submitting his "Counter Affidavit," not given due course.

The crux of the complaint against respondent is that he forged his civil service eligibility in that someone took the civil service examination in his stead, and he lacked one accounting subject in his course, hence, contrary to his claim, he was not a college graduate.

Respondent explains, however, that since he majored in banking and finance and had fully satisfied the number of required units in accounting, he dropped that accounting subject, and the University of Visayas allowed him to receive his college diploma.

In any event, respondent claims that even assuming that he did not earn the complete units required to merit the issuance to him of a diploma, the "deficiency" has been cured by his consistent, satisfactory performance rating while in the service.

Respecting the allegation that he is not a civil service eligible, respondent vaguely proffers that his civil service eligibility was passed upon, "checked and ratified" by the Civil Service Commission which approved his appointment.

Acting on the complaints, the Office of the Court Administrator (OCA) wrote[5] the Registrar of the University of Visayas in Cebu requesting a "Certification of [respondent's] Graduation," it appearing from his scholastic records that he was given two incomplete grades in two subjects — Government Accounting and Auditing Part II in his last semester (second semester, 1982-1983) in college. The University of Visayas did not, however, respond to the letter-request.

The Court, on recommendation of the OCA, referred the complaints against respondent to the Executive Judge of RTC Cebu for report and recommendation. Respecting the complaint against Ariel, since the position of Process Server does not require civil service eligibility, the OCA dismissed the same.

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[5] Letter dated November 21, 2007, *rollo*, p. 11.

Judge Meinardo P. Paredes, Executive Judge of the RTC Cebu and Presiding Judge of Branch 13 thereof, conducted an investigation of the complaint on November 22, 2001 during which the complainant and respondent appeared.

When confronted by the investigating judge on the purported statement in his Personal Data Sheet (PDS) that he is a college graduate, respondent answered that he "only stated college level."

When the investigating judge suggested that respondent submit a copy of his PDS, he committed to submit the same.

In the same investigation, as respondent claimed to have submitted to the Supreme Court a Certification bearing on the result of the civil service examination he took, he, again on the suggestion of the investigating judge, committed to submit a copy thereof. He was thereupon given 15 days from the conclusion of the investigation on November 22, 2010 to submit certified true copies of the following:

1) Certificate of Eligibility from the Civil Service Commission;
2) Personal Data Sheet mentioned by Hon. Jose P. Perez; and
3) Certificate of Graduation from the University of Visayas, Cebu City[6]

In his December 16, 2010 Report and Recommendation,[7] the investigating judge noted that respondent failed to submit the required documents and that he instead filed a Manifestation stating that, to quote the investigating judge, "the proper court procedure is for the prosecution or complainant to produce the evidence and for the defendant or respondent to presence [sic] his defense."

Noting then that respondent failed to refute complainant's allegation that he is not eligible to hold permanent office in the judiciary and that he falsified his employment record, the

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[6] *Id.* at 151.

[7] *Id.* at 102-107.

investigating judge *recommended* that he be dismissed from the service with forfeiture of all his benefits.

The Court finds the Report and Recommendation of the investigating judge in order.

Respondent's failure to adduce documentary proof of his civil service eligibility and of his graduation from the University of Visayas, Cebu indicates that any information he may divulge or present would be detrimental to his cause. Inevitably, the Court is led to the conclusion that, contrary to his representation, he was neither a college graduate nor did he pass the requisite civil service exam.

In the aforementioned Report and Recommendation, the investigating judge quoted excerpts of the hearing on November 22, 2010 during which respondent finally and unqualifiedly admitted that he does not have a college diploma as he did not graduate. It bears particularly noting that despite the investigating judge's assurance that all respondent needed to have the administrative case against him dropped was to secure a certification from the CSC, respondent failed to do so.

Clearly, respondent misrepresented his qualifications as to his educational attainment and eligibility for government service. This misrepresentation amounts to plain and simple dishonesty which, in this case, refers to the act of intentionally making a false statement on any material fact in securing one's appointment. It is a serious offense reflective of a person's character and the moral decay he suffers from, virtually destroying all honor, virtue and integrity. It is a malevolent act that has no place in the judiciary. No other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary.[8]

Respondent's insistence that any deficiency arising from the lack of a college diploma was cured by his satisfactory performance ratings arising from his many years in public service deserves

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[8] *Anonymous v. Curamen*, A.M. No. P-08-2549, June 18, 2010, 621 SCRA 212, 218-219.

scant consideration. But even assuming *arguendo* that respondent's ratings mirror his performance, the core issue here is his fitness to continue serving in a sensitive post.

Section 52, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) and other pertinent Civil Service Laws classify dishonesty and falsification of a public document as grave offenses such that even the first offense of this nature is already punishable by dismissal from the service.[9]

Apropos is this Court's counsel in *Aldecoa-Delorino v. Remigio-Versoza*[10] on how it views, and intends to deal with such acts of dishonesty, thus:

> Let this case serve as a warning to all court personnel that the Court, in the exercise of its administrative supervision over all lower courts and their personnel, will not hesitate to enforce the full extent of the law in disciplining and purging from the Judiciary all those who are not befitting the integrity and dignity of the institution, even if it would mean their dismissal from the service despite their length of service. Any act of dishonesty, misrepresentation, or falsification done by a court employee that may lead to moral decadence shall be dealt with severely.[11]

WHEREFORE, respondent, Primitivo A. Sumayo, Clerk III of the Regional Trial Court of Cebu City, Branch 10, is found *GUILTY* of gross dishonesty and falsification of public records, and is *DISMISSED* from the service effective immediately, with forfeiture of all his retirement benefits except accrued leaves, and with prejudice to his re-employment in the government service, including government owned and controlled corporations.

SO ORDERED.

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[9] *Ibid.* at 219.

[10] A.M. No. P-08-2433, September 25, 2009, 601 SCRA 27.

[11] *Id.* at 45.

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 due to prior action as Court Administrator.

EN BANC

[A.M. No. P-11-2913. April 12, 2011]
(Formerly OCA I.P.I. No. 08-2810-P)

MA. CHEDNA ROMERO, *complainant, vs.* **PACIFICO B. VILLAROSA, JR., Sheriff IV, Regional Trial Court, Branch 17, Palompon, Leyte,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; MUST DISCHARGE THEIR DUTIES WITH GREAT CARE AND DILIGENCE, PERFORM FAITHFULLY AND ACCURATELY WHAT IS INCUMBENT UPON THEM AND AT ALL TIMES SHOW A HIGH DEGREE OF PROFESSIONALISM IN THE PERFORMANCE OF THEIR DUTIES.—** Sheriffs are officers of the court who serve and execute writs addressed to them by the court, and who prepare and submit returns on their proceedings. As officers, they must discharge their duties with great care and diligence, perform faithfully and accurately what is incumbent upon them, and at all times show a high degree of professionalism in the performance of their duties. Despite being exposed to the hazards that come with the implementation of a judgment, sheriffs must perform their duties by the book. In contravention of his duties, numerous irregularities in the transactions of Sheriff Villarosa were observed by the Investigating Judge and this Court.

2. **ID.; ID.; ID.; THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; ENJOINS PUBLIC OFFICIALS AND EMPLOYEES TO DISCHARGE THEIR DUTIES WITH UTMOST RESPONSIBILITY, INTEGRITY AND COMPETENCE; ANY CONDUCT CONTRARY THERETO WOULD QUALIFY AS CONDUCT UNBECOMING OF A GOVERNMENT EMPLOYEE.—** The Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the state policy to promote a high standard of ethics in public service, and enjoins public officials and employees to discharge their duties with utmost responsibility, integrity and competence. Section 4 of the Code lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. Thus, any conduct contrary to these standards would qualify as conduct unbecoming of a government employee.

3. **ID.; ID.; ID.; ID.; GRAVE ABUSE OF AUTHORITY AND DISHONESTY DEFINED.—** With regard to grave abuse of authority, such has been defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; it is an act of cruelty, severity, or excessive use of authority. On the other hand, dishonesty has been defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

4. **ID.; ID.; ID.; SHERIFFS; NOT PERMITTED TO RETAIN THE MONEY IN THEIR POSSESSION BEYOND THE DAY WHEN PAYMENT WAS MADE OR TO DELIVER THE MONEY COLLECTED DIRECTLY TO THE JUDGMENT OBLIGEE.—** Sheriff Villarosa manifestly failed to observe Section 9 of Rule 39 of the Rules of Court. Given the numerous amounts that were remitted to him by Enriqueta Laurente on various occasions, at no instance did he turn over such amounts within the same day that they were received by him. x x x. Section 9 of Rule 39 states that when the judgment obligee is

not present at the time the judgment obligor makes the payment, the sheriff is authorized to receive it. However, the money received must be remitted to the clerk of court within the same day or, if not practicable, deposited in a fiduciary account with the nearest government depository bank. Evidently, sheriffs are not permitted to retain the money in their possession beyond the day when the payment was made or to deliver the money collected directly to the judgment obligee.

5. **ID.; ID.; ID.; ID.; OFFICERS CHARGED WITH THE TASK OF EXECUTING JUDGMENT MUST, IN THE ABSENCE OF A RESTRAINING ORDER, ACT WITH CONSIDERABLE DISPATCH SO AS NOT TO UNDULY DELAY THE ADMINISTRATION OF JUSTICE; OTHERWISE THE DECISIONS AND OTHER PROCESSES OF THE COURTS OF JUSTICE WOULD BE FUTILE.—** It is recognized that the most difficult phase of any proceeding is the execution of judgment. Thus, officers charged with this task must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice would be futile. After all, a decision left unexecuted or indefinitely delayed due to their inefficiency renders it useless. Sheriff Villarosa's repeated and evident delays hindered the speedy administration of justice for Romero and the spouses Laurente.

6. **ID.; ID.; ID.; ID.; MUST FAITHFULLY ACCOUNT FOR THE MONEY RECEIVED AND TURNED OVER TO HIM.—** Sheriff Villarosa's delivery of amounts in excess of what was remitted to him by Enriqueta Laurente, also evinces a failure of his duty as sheriff to properly account for all amounts received and turned over by him. As the amounts were received by him by virtue of his office, it was his duty, as sheriff, to faithfully account for said money. By failing to deliver the **exact amounts** remitted to him by the judgment obligor, it is apparent that he failed to faithfully account for the money which he received. Sheriffs have the duty to perform faithfully and accurately what is incumbent upon them, and any method of execution falling short of the requirement of the law should not be countenanced. Sheriff Villarosa's conduct is highly irregular and suspicious. He repeatedly failed to comply with his duties under the Rules. Despite the several dates set for hearing, he did not appear

and opted instead to submit his Position Paper where he failed to address any of the aforementioned irregularities.

7. ID.; ID.; ID.; ID.; DELAY IN THE DEPOSIT OF THE FINAL AMOUNT RECEIVED BY HIM AND FAILURE TO FAITHFULLY ACCOUNT FOR THE AMOUNTS HE RECEIVED THRU HIS FAILURE TO DELIVER THE EXACT AMOUNTS, ARE CLEAR MANIFESTATION OF CONDUCT UNBECOMING A GOVERNMENT EMPLOYEE, TANTAMOUNT TO GRAVE ABUSE OF DISCRETION.— [S]heriff Villarosa's failure to comply with Section 9 of Rule 39 by delaying the deposit of the final amount he received and not delivering the other amounts to the Clerk of Court; and to faithfully account for the amounts he received thru his failure to deliver the exact amounts and his inconsistent assertions regarding the ₱3,000.00, are clear manifestation of conduct unbecoming a government employee, tantamount to grave abuse of authority and dishonesty. He failed to perform his duty as sheriff in accordance with the Rules, thereby acting contrary to law, good morals, and public policy, in disregard of the rights of the litigants. By acting under color of his office and in excess of his authority, he wrongfully inflicted injury onto the parties involved. His conduct goes against the nature of the performance by a government employee of his functions, and casts a shadow over his motives. His conduct and resulting nonfeasance reek of a lack of integrity and honesty, and reveal a disposition to deceive. Sheriff Villarosa's guilt was thus proven by substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, such being the quantum of proof required in administrative cases.

8. ID.; ID.; ID.; ID.; WHEN A WRIT IS PLACED IN THE HANDS OF SHERIFF, IT BECOMES HIS MINISTERIAL DUTY TO PROCEED WITH REASONABLE CELERITY AND PROMPTNESS TO IMPLEMENT IT IN ACCORDANCE WITH ITS MANDATE.— A sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary. High standards of conduct are expected of sheriffs who play an important role in the administration of justice. They are tasked with the primary duty to execute final judgments and orders of the courts. When a writ is placed in the hands of a sheriff,

it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party.

9. **ID.; ID.; ID.; THE CONDUCT THEREOF MUST NOT ONLY BE, BUT MUST ALSO BE, PERCEIVED TO BE FREE FROM ANY WHIFF OF IMPROPRIETY, BOTH WITH RESPECT TO THEIR DUTIES IN THE JUDICIARY AND TO THEIR BEHAVIOR OUTSIDE THE COURT.—** All court employees, regardless of rank, being public servants in an office dispensing justice, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. The conduct of court personnel therefore, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior outside the court. Any act or omission of any court employee diminishing or tending to diminish public trust and confidence in the courts will not be tolerated. The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities.

10. **ID.; ID.; ID.; GRAVE ABUSE OF AUTHORITY AND DISHONESTY, PROPER PENALTY.—** Under Rule IV, Section 52(A)(14) of the Uniform Rules on Administrative Cases in the Civil Service, grave abuse of authority or oppression is a grave offense punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from service for the second infraction. While dishonesty, also a grave offense under Section 52(A)(1) of the same Rule, is punishable by dismissal for the first offense. Sheriff Villarosa being guilty of dishonesty, the penalty of dismissal is just and proper.

APPEARANCES OF COUNSEL

Asterio A. Villero for complainant.

D E C I S I O N

PER CURIAM:

Before this Court is a Sworn Complaint[1] filed on July 4, 2007, by complainant Ma. Chedna Romero *(Romero),* charging respondent Pacifico B. Villarosa, Jr. *(Sheriff Villarosa),* Sheriff IV of Regional Trial Court *(RTC),* Branch 17, Palompon, Leyte, with grave abuse of authority, conduct unbecoming of a government employee, dishonesty and estafa, for failing to remit amounts owing to her by virtue of a compromise agreement.

In accordance with the recommendation of the Office of the Court Administrator *(OCA)* dated April 21, 2008, the complaint was referred on September 15, 2008 to Judge Apolinario M. Buaya *(Investigating Judge),* Executive Judge of the RTC of Ormoc City, for investigation, report and recommendation.

The Investigating Judge submitted his Report[2] on January 18, 2010, which was referred on September 6, 2010 to the OCA for evaluation, report and recommendation.

The facts, as culled from the records and the Report of the Investigating Judge, are as follows:

Romero was the plaintiff in a claim for damages, docketed as Civil Case No. 462, entitled "*Maria Chedna Romero vs. Sps. Valentin and Enriqueta A. Laurente*," filed with the Municipal Trial Court *(MTC)* of Palompon. The case was amicably settled by way of a Compromise Agreement[3] dated December 8, 2005, duly approved by the MTC, where Spouses Valentin Laurente and Enriqueta Laurente *(Spouses Laurente)* bound themselves to pay Romero a total amount of ₱30,000.00, ₱24,000.00 of which would be paid on or before March 2006, and the remaining balance of ₱6,000.00 on or before October 2006.

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[1] *Rollo*, pp. 4-5.

[2] *Id.* at 224-227.

[3] *Id.* at 8-10.

On December 6, 2005, Romero had already received the amount of ₱10,000.00 from Enriqueta Laurente in partial compliance with the obligation.[4] Failing to receive the balance of ₱20,000.00 in accordance with the Compromise Agreement, Romero filed a Motion for the Issuance of a Writ Execution dated April 18, 2006, for which a corresponding writ was issued on August 8, 2006. In response thereto, Enriqueta Laurente attested[5] that she had delivered the amount of ₱20,000.00 to Sheriff Villarosa, as supported by a certification[6] executed by the latter himself, dated May 9, 2007, that they had fully paid such amount. Romero added that Sheriff Villarosa demanded a total amount of ₱1,500.00 from her on two occasions as sheriff's fee.

In his Comment[7] dated August 7, 2007, Sheriff Villarosa denied any wrongdoing. He admitted having received ₱200.00 from Romero for gasoline expenses for his trip to the residence of the spouses Laurente. He further admitted having received the total amount of ₱13,000.00 from Enriqueta Laurente, evidenced by acknowledgment receipts,[8] as follows:

₱ 3,000.00	September 20, 2006
₱ 1,700.00	November 15, 2006
₱ 4,000.00	December 6, 2006
₱ 1,000.00	January 9, 2007
₱ 3,300.00	February 28, 2007
₱13,000.00	

Of the above-stated ₱13,000.00, Sheriff Villarosa claimed that he had directly turned over ₱10,000.00 to Romero, evidenced by acknowledgment receipts,[9] as follows:

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[4] *Id.* at 25.

[5] *Id.* at 124.

[6] *Id.* at 123.

[7] *Id.* at 18-19.

[8] *Id.* at 11-15.

[9] *Id.* at 22-23.

₱ 7,000.00	November 2006
₱ 3,000.00	January 10, 2007
₱10,000.00	

Regarding the remaining ₱3,000.00, he claimed that it was given by Enriqueta Laurente directly to the Officer-in-charge *(OIC)* Clerk of Court of RTC, Branch 17, Palompon.

On May 2, 2007, Romero received the amount of ₱4,000.00 directly from Enriqueta Laurente.[10] As stated in the earlier mentioned Certification of Sheriff Villarosa, the full amount of ₱20,000.00 had already been fully paid by the spouses Laurente as of May 9, 2007.

Also in May 2007, Sheriff Villarosa alleged that for unknown reasons, Romero refused to receive the final amount of ₱6,000.00 from him, prompting him to deposit the amount by way of consignation with the OIC Clerk of Court of the MTC of Palompon. He claimed that a receipt[11] was issued for the final amount only on November 27, 2008 because the acting OIC refused to issue a receipt in such capacity. On April 17, 2009, Romero received the final amount of ₱6,000.00 from the MTC Clerk of Court of Palompon.[12]

In sum, Romero received the full amount of the obligation in accordance with the Compromise Agreement, as follows:

₱10,000.00	December 6, 2005, received directly from Enriqueta Laurente
₱ 7,000.00	November 2006, received from Sheriff Villarosa
₱ 3,000.00	January 10, 2007, received from Sheriff Villarosa

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[10] *Id.* at 16.

[11] *Id.* at 152.

[12] *Id.* at 154.

₱ 4,000.00	May 2, 2007, received directly from Enriqueta Laurente
₱ 6,000.00	April 17, 2009, received from the Clerk of Court of MTC Palompon
₱30,000.00	

Finding the above transactions of Sheriff Villarosa to be highly anomalous and irregular, the Investigating Judge found him guilty of grave abuse of authority, conduct unbecoming of a government employee and dishonesty. He recommended his suspension for a period of six months and the payment of a fine equivalent to three months' salary, with a stern warning that a repetition of the same offense would merit dismissal.

The OCA agreed with the factual findings of the Investigating Judge, and likewise found Sheriff Villarosa guilty of grave misconduct and dishonesty, but recommended his outright dismissal from the service.

The factual findings of the Investigating Judge and recommendation of the OCA are well-taken and adopted by the Court.

Sheriffs are officers of the court who serve and execute writs addressed to them by the court, and who prepare and submit returns on their proceedings. As officers, they must discharge their duties with great care and diligence, perform faithfully and accurately what is incumbent upon them, and at all times show a high degree of professionalism in the performance of their duties. Despite being exposed to the hazards that come with the implementation of a judgment, sheriffs must perform their duties by the book.[13] In contravention of his duties, numerous irregularities in the transactions of Sheriff Villarosa were observed by the Investigating Judge and this Court.

First, Sheriff Villarosa admitted having received a total of ₱13,000.00 from Enriqueta Laurente but turned over only

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[13] *Peña, Jr. v. Regalado II*, A.M. No. P-10-2772, February 16, 2010, 612 SCRA 536, 542.

₱10,000.00 to Romero. He claimed that the remaining ₱3,000.00 was given directly to the OIC Clerk of Court of the MTC of Palompon but this assertion was plainly belied by the Affidavit[14] of Enriqueta Laurente and the Certification[15] of the Clerk of Court.

Second, Sheriff Villarosa remitted amounts to Romero different from the amounts he received from Enriqueta Laurente which could only be indicative of his failure to immediately account therefor. In November 2006, ₱7,000.00 was remitted by Sheriff Villarosa to Romero, when Enriqueta Laurente had so far only paid him the aggregate amount of ₱4,700.00. By January 10, 2007, he had turned over to Romero the total amount of ₱10,000.00, when he had so far only received ₱9,700.00 from Enriqueta Laurente.

Third, Sheriff Villarosa only delivered the final balance of ₱6,000.00 to the MTC Clerk of Court of Palompon on November 27, 2008, or more than a year after Romero allegedly refused to receive such amount from him. He further failed to show when he received such amount from Enriqueta Laurente, or the ₱3,000.00 from the Clerk of Court whom, he claimed, directly received it. Furthermore, not only was he in delay in delivering the final balance, but he was also in delay in the delivery of all the amounts remitted to him by Enriqueta Laurente.

Fourth, Sheriff Villarosa delivered the amounts he received from Enriqueta Laurente directly to Romero, the judgment obligee, instead of the Clerk of Court.

Section 9 of Rule 39 of the Rules of Court provides in part:

Sec. 9. Execution of judgments for money, how enforced.

(a) Immediate payment on demand.— The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in

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[14] *Rollo*, p. 124.

[15] *Id.* at 123.

cash, certified bank check payable to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession **within the same day to the clerk of court** of the court that issued the writ, or if the same is not practicable, deposit said amount to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

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From the above, it is clear that in the execution of judgments for money, where the judgment obligee is not present to receive payment, the judgment obligor shall deliver payment to the executing sheriff who, in turn, shall turn over such payment **within the same day** to the **clerk of court** who issued the writ, or if the same is not practicable, the amount should be deposited to a fiduciary account in the nearest government depositary bank of the RTC of the locality. In either case, it is the clerk of court, and not the sheriff, who should deliver the amount to the judgment obligee.

The Code of Conduct and Ethical Standards for Public Officials and Employees[16] enunciates the state policy to promote a high standard of ethics in public service, and enjoins public officials

[16] Republic Act No. 6713.

and employees to discharge their duties with utmost responsibility, integrity and competence. Section 4 of the Code lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. Thus, any conduct contrary to these standards would qualify as conduct unbecoming of a government employee.

With regard to grave abuse of authority, such has been defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; it is an act of cruelty, severity, or excessive use of authority.[17] On the other hand, dishonesty has been defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[18]

Guided by the foregoing, it is clear that Sheriff Villarosa is guilty of conduct unbecoming of a government employee, grave abuse of authority, and dishonesty, characterized by serious nonfeasance.

Sheriff Villarosa manifestly failed to observe Section 9 of Rule 39 of the Rules of Court. Given the numerous amounts that were remitted to him by Enriqueta Laurente on various occasions, at no instance did he turn over such amounts within the same day that they were received by him. As regards the delivery of the final balance of ₱6,000.00, it was not shown when such amount was received by him. Even counting from

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[17] *Rafael v. Sualog*, A.M. No. P-07-2330, June 12, 2008, 554 SCRA 278, 287; citing *Aranda, Jr. v. Alvarez*, A.M. No. P-04-1889, November 23, 2007, 538 SCRA 162, and *Stilgrove v. Sabas*, A.M. No. P-06-2257, November 29, 2006, 508 SCRA 383, 400.

[18] *Re: Irregularity in the Use of Bundy Clocks by Sophia M. Castro and Babylin V. Tayag*, A.M. No. P-10-2763, February 10, 2010.

the time in May 2007 when he claimed that Romero refused to receive such amount, more than a year had elapsed from such attempted delivery before he turned over the said amount to the clerk of court. His defense that the acting OIC refused to issue a receipt in May 2007, is simply too tenuous to be believed. Even granting such defense to be true, other dubious irregularities prevail in the case at bench.

Section 9 of Rule 39 states that when the judgment obligee is not present at the time the judgment obligor makes the payment, the sheriff is authorized to receive it. However, the money received must be remitted to the clerk of court within the same day or, if not practicable, deposited in a fiduciary account with the nearest government depository bank. Evidently, sheriffs are not permitted to retain the money in their possession beyond the day when the payment was made or to deliver the money collected directly to the judgment obligee.[19]

It is recognized that the most difficult phase of any proceeding is the execution of judgment. Thus, officers charged with this task must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice would be futile.[20] After all, a decision left unexecuted or indefinitely delayed due to their inefficiency renders it useless.[21] Sheriff Villarosa's repeated and evident delays hindered the speedy administration of justice for Romero and the spouses Laurente.

Sheriff Villarosa's delivery of amounts in excess of what was remitted to him by Enriqueta Laurente, also evinces a failure of his duty as sheriff to properly account for all amounts received and turned over by him. As the amounts were received by him by virtue of his office, it was his duty, as sheriff, to faithfully

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[19] *Peña, Jr. v. Regalado II*, *supra* note 13 at 543.

[20] *Go v. Hortaleza*, A.M. No. P-05-1971, June 26, 2008, 555 SCRA 406, 412; citing *Zarate v. Untalan*, 494 Phil. 208, 218 (2005).

[21] *Agunday v. Velasco*, A.M. No. P-05-2003, December 6, 2010.

account for said money.[22] By failing to deliver the **exact amounts** remitted to him by the judgment obligor, it is apparent that he failed to faithfully account for the money which he received. Sheriffs have the duty to perform faithfully and accurately what is incumbent upon them, and any method of execution falling short of the requirement of the law should not be countenanced.[23]

Sheriff Villarosa's conduct is highly irregular and suspicious. He repeatedly failed to comply with his duties under the Rules. Despite the several dates set for hearing, he did not appear and opted instead to submit his Position Paper[24] where he failed to address any of the aforementioned irregularities.

In sum, Sheriff Villarosa's failure to comply with Section 9 of Rule 39 by delaying the deposit of the final amount he received and not delivering the other amounts to the Clerk of Court; and to faithfully account for the amounts he received thru his failure to deliver the exact amounts and his inconsistent assertions regarding the ₱3,000.00, are clear manifestation of conduct unbecoming a government employee, tantamount to grave abuse of authority and dishonesty. He failed to perform his duty as sheriff in accordance with the Rules, thereby acting contrary to law, good morals, and public policy, in disregard of the rights of the litigants. By acting under color of his office and in excess of his authority, he wrongfully inflicted injury onto the parties involved. His conduct goes against the nature of the performance by a government employee of his functions, and casts a shadow over his motives. His conduct and resulting nonfeasance reek of a lack of integrity and honesty, and reveal a disposition to deceive.

Sheriff Villarosa's guilt was thus proven by substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, such being the quantum of proof required in administrative cases.[25]

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[22] *Moreno v. Reyes*, 39 Phil. 462, 464 (1919).

[23] *Peña, Jr. v. Regalado II*, *supra* note 13 at 545.

[24] *Rollo*, pp. 138-142.

[25] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011.

A sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary.[26] High standards of conduct are expected of sheriffs who play an important role in the administration of justice. They are tasked with the primary duty to execute final judgments and orders of the courts. When a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party.[27]

All court employees, regardless of rank, being public servants in an office dispensing justice, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. The conduct of court personnel therefore, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior outside the court. Any act or omission of any court employee diminishing or tending to diminish public trust and confidence in the courts will not be tolerated.[28] The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities.[29]

Under Rule IV, Section 52(A)(14) of the Uniform Rules on Administrative Cases in the Civil Service, [30] grave abuse of

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[26] *Go v. Hortaleza*, A.M. No. P-05-1971, June 26, 2008, 555 SCRA 406, 415.

[27] *Id.* at 412; citing *Zarate v. Untalan*, 494 Phil. 208, 218 (2005).

[28] *Office of the Court Administrator v. Lopez*, *supra* note 25.

[29] *Peña, Jr. v. Regalado II*, *supra* note 13 at 545.

[30] CSC Resolution No. 99-1936.

authority or oppression is a grave offense punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from service for the second infraction.[31] While dishonesty, also a grave offense under Section 52(A)(1) of the same Rule, is punishable by dismissal for the first offense. Sheriff Villarosa being guilty of dishonesty, the penalty of dismissal is just and proper.

WHEREFORE, Pacifico B. Villarosa, Jr., Sheriff IV of Regional Trial Court, Branch 17, Palompon, Leyte, is hereby found *GUILTY* of Conduct Unbecoming a Public Official, Grave Abuse of Authority, and Dishonesty, and is hereby ordered *DISMISSED* from the service, with forfeiture of all benefits, except leave credits already accrued. He is further barred from re-employment in any branch or office of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Perez, J., no part.

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[31] *Rafael v. Sualog*, A.M. No. P-07-2330, June 12, 2008, 554 SCRA 278, 287; citing *Aranda, Jr. v. Alvarez*, A.M. No. P-04-1889, November 23, 2007, 538 SCRA 162, and *Stilgrove v. Sabas*, A.M. No. P-06-2257, November 29, 2006, 508 SCRA 383, 400.

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[G.R. No. 166859. April 12, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), EDUARDO M. COJUANGCO, JR., AGRICULTURAL CONSULTANCY SERVICES, INC., ARCHIPELAGO REALTY CORP., BALETE RANCH, INC., BLACK STALLION RANCH, INC., CHRISTENSEN PLANTATION COMPANY, DISCOVERY REALTY CORP., DREAM PASTURES, INC., ECHO RANCH, INC., FAR EAST RANCH, INC., FILSOV SHIPPING COMPANY, INC., FIRST UNITED TRANSPORT, INC., HABAGAT REALTY DEVELOPMENT, INC., KALAWAKAN RESORTS, INC., KAUNLARAN AGRICULTURAL CORP., LABAYUG AIR TERMINALS, INC., LANDAIR INTERNATIONAL MARKETING CORP., LHL CATTLE CORP., LUCENA OIL FACTORY, INC., MEADOW LARK PLANTATIONS, INC., METROPLEX COMMODITIES, INC., MISTY MOUNTAIN AGRICULTURAL CORP., NORTHEAST CONTRACT TRADERS, INC., NORTHERN CARRIERS CORP., OCEANSIDE MARITIME ENTERPRISES, INC., ORO VERDE SERVICES, INC., PASTORAL FARMS, INC., PCY OIL MANUFACTURING CORP., PHILIPPINE TECHNOLOGIES, INC., PRIMAVERA FARMS, INC., PUNONG-BAYAN HOUSING DEVELOPMENT CORP., PURA ELECTRIC COMPANY, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., RADYO PILIPINO CORP., RANCHO GRANDE, INC., REDDEE DEVELOPERS, INC., SAN ESTEBAN DEVELOPMENT CORP., SILVER LEAF PLANTATIONS, INC., SOUTHERN SERVICE TRADERS, INC., SOUTHERN STAR CATTLE CORP., SPADE ONE RESORTS CORP.,**

UNEXPLORED LAND DEVELOPERS, INC., VERDANT PLANTATIONS, INC., VESTA AGRICULTURAL CORP. and WINGS RESORTS CORP., *respondents.*

[G.R. No. 169203. April 12, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), EDUARDO M. COJUANGCO, JR., MEADOW LARK PLANTATIONS, INC., SILVER LEAF PLANTATIONS, INC., PRIMAVERA FARMS, INC., PASTORAL FARMS, INC., BLACK STALLION RANCH, INC., MISTY MOUNTAINS AGRICULTURAL CORP., ARCHIPELAGO REALTY CORP., AGRICULTURAL CONSULTANCY SERVICES, INC., SOUTHERN STAR CATTLE CORP., LHL CATTLE CORP., RANCHO GRANDE, INC., DREAM PASTURES, INC., FAR EAST RANCH, INC., ECHO RANCH, INC., LAND AIR INTERNATIONAL MARKETING CORP., REDDEE DEVELOPERS, INC., PCY OIL MANUFACTURING CORP., LUCENA OIL FACTORY, INC., METROPLEX COMMODITIES, INC., VESTA AGRICULTURAL CORP., VERDANT PLANTATIONS, INC., KAUNLARAN AGRICULTURAL CORP., ECJ & SONS AGRICULTURAL ENTERPRISES, INC., RADYO PILIPINO CORP., DISCOVERY REALTY CORP., FIRST UNITED TRANSPORT, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., ARCHIPELAGO FINANCE AND LEASING CORP., SAN ESTEBAN DEVELOPMENT CORP., CHRISTENSEN PLANTATION COMPANY, NORTHERN CARRIERS CORP., VENTURE SECURITIES, INC., BALETE RANCH, INC., ORO VERDE SERVICES, INC., and KALAWAKAN RESORTS, INC.,** *respondents.*

[G.R. No. 180702. April 12, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EDUARDO M. COJUANGCO, JR., FERDINAND E. MARCOS, IMELDA R. MARCOS, EDGARDO J. ANGARA,* JOSE C. CONCEPCION, AVELINO V. CRUZ, EDUARDO U. ESCUETA, PARAJA G. HAYUDINI, JUAN PONCE ENRILE, TEODORO D. REGALA, DANILO URSUA, ROGELIO A. VINLUAN, AGRICULTURAL CONSULTANCY SERVICES, INC., ANGLO VENTURES, INC., ARCHIPELAGO REALTY CORP., AP HOLDINGS, INC., ARC INVESTMENT, INC., ASC INVESTMENT, INC., AUTONOMOUS DEVELOPMENT CORP., BALETE RANCH, INC., BLACK STALLION RANCH, INC., CAGAYAN DE ORO OIL COMPANY, INC., CHRISTENSEN PLANTATION COMPANY, COCOA INVESTORS, INC., DAVAO AGRICULTURAL AVIATION, INC., DISCOVERY REALTY CORP., DREAM PASTURES, INC., ECHO RANCH, INC., ECJ & SONS AGRI. ENT., INC., FAR EAST RANCH, INC., FILSOV SHIPPING COMPANY, INC., FIRST MERIDIAN DEVELOPMENT, INC., FIRST UNITED TRANSPORT, INC., GRANEXPORT MANUFACTURING CORP., HABAGAT REALTY DEVELOPMENT, INC., HYCO AGRICULTURAL, INC., ILIGAN COCONUT INDUSTRIES, INC., KALAWAKAN RESORTS, INC., KAUNLARAN AGRICULTURAL CORP., LABAYOG AIR TERMINALS, INC., LANDAIR INTERNATIONAL MARKETING CORP., LEGASPI OIL COMPANY, LHL CATTLE CORP., LUCENA OIL FACTORY, INC., MEADOW LARK PLANTATIONS, INC., METROPLEX COMMODITIES, INC., MISTY MOUNTAIN AGRICULTURAL CORP., NORTHEAST CONTRACT TRADERS, INC., NORTHERN CARRIERS CORP., OCEANSIDE MARITIME**

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* Defendants-lawyers from ACCRA law firm were excluded from the case per *Regala v. Sandiganbayan*, 330 Phil. 678 (1996).

ENTERPRISES, INC., ORO VERDE SERVICES, INC., PASTORAL FARMS, INC., PCY OIL MANUFACTURING CORP., PHILIPPINE RADIO CORP., INC., PHILIPPINE TECHNOLOGIES, INC., PRIMAVERA FARMS, INC., PUNONG-BAYAN HOUSING DEVELOPMENT CORP., PURA ELECTRIC COMPANY, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., RADYO PILIPINO CORP., RANCHO GRANDE, INC., RANDY ALLIED VENTURES, INC., REDDEE DEVELOPERS, INC., ROCKSTEEL RESOURCES, INC., ROXAS SHARES, INC., SAN ESTEBAN DEVELOPMENT CORP., SAN MIGUEL CORPORATION OFFICERS, INC., SAN PABLO MANUFACTURING CORP., SOUTHERN LUZON OIL MILLS, INC., SILVER LEAF PLANTATIONS, INC., SORIANO SHARES, INC., SOUTHERN SERVICE TRADERS, INC., SOUTHERN STAR CATTLE CORP., SPADE 1 RESORTS CORP., TAGUM AGRICULTURAL DEVELOPMENT CORP., TEDEUM RESOURCES, INC., THILAGRO EDIBLE OIL MILLS, INC., TODA HOLDINGS, INC., UNEXPLORED LAND DEVELOPERS, INC., VALHALLA PROPERTIES, INC., VENTURES SECURITIES, INC., VERDANT PLANTATIONS, INC., VESTA AGRICULTURAL CORP. and WINGS RESORTS CORP., *respondents.* **JOVITO R. SALONGA, WIGBERTO E. TAÑADA, OSCAR F. SANTOS, VIRGILIO M. DAVID, ROMEO C. ROYANDAYAN for himself and for SURIGAO DEL SUR FEDERATION OF AGRICULTURAL COOPERATIVES (SUFAC), MORO FARMERS ASSOCIATION OF ZAMBOANGA DEL SUR (MOFAZS) and COCONUT FARMERS OF SOUTHERN LEYTE COOPERATIVE (COFA-SL); PHILIPPINE RURAL RECONSTRUCTION MOVEMENT (PRRM), represented by CONRADO S. NAVARRO; COCONUT INDUSTRY REFORM MOVEMENT, INC. (COIR) represented by JOSE MARIE T. FAUSTINO; VICENTE FABE for himself and for PAMBANSANG KILUSAN NG MGA**

SAMAHAN NG MAGSASAKA (PAKISAMA); NONITO CLEMENTE for himself and for the NAGKAKAISANG UGNAYAN NG MGA MALILIIT NA MAGSASAKA AT MANGGAGAWA SA NIYUGAN (NIUGAN); DIONELO M. SUANTE, SR. for himself and for KALIPUNAN NG MALILIIT NA MAGNINIYOG NG PILIPINAS (KAMMPIL), INC., *petitioners-intervenors.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT ESTABLISHED IN THE CASE AT BAR.—** Plainly enough, the irregularities infirming the issuance of the several WOS could not be ignored in favor of the Republic and resolved against the persons whose properties were subject of the WOS. Where the Rules of the PCGG instituted safeguards under Section 3, *supra*, by requiring the concurrent signatures of two Commissioners to every WOS issued and the existence of a *prima facie* case of ill gotten wealth to support the issuance, the non-compliance with either of the safeguards nullified the WOS thus issued. It is already settled that sequestration, due to its tendency to impede or limit the exercise of proprietary rights by private citizens, is construed *strictly* against the State, conformably with the legal maxim that statutes in derogation of common rights are generally strictly construed and rigidly confined to the cases clearly within their scope and purpose. Consequently, the nullification of the nine WOS, being in implementation of the safeguards the PCGG itself had instituted, did not constitute any abuse of its discretion, least of all grave, on the part of the Sandiganbayan.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 1 (1986); PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; ILL-GOTTEN WEALTH; MEANING AND CONCEPT, ELABORATED.—** In time and unavoidably, the Supreme Court elaborated on the meaning and concept of *ill-gotten wealth*. In *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*, or *BASECO*, for the sake of brevity, the Court held that: xxx until it can be determined, through appropriate judicial proceedings,

whether the property was in truth "ill-gotten," *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of **funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions,** or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions. The *BASECO* definition of *ill-gotten wealth* was reiterated in *Presidential Commission on Good Government v. Lucio C. Tan*, where the Court said: On this point, we find it relevant to define "ill-gotten wealth." In *Bataan Shipyard and Engineering Co., Inc.*, this Court described "ill-gotten wealth" as follows: "Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction." x x x Incidentally, in its 1998 ruling in *Chavez v. Presidential Commission on Good Government*, the Court rendered an identical definition of *ill-gotten wealth*, *viz*: xxx. We may also add that 'ill-gotten wealth', by its very nature, assumes a public character. Based on the aforementioned Executive Orders, 'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through **or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships**, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." **Clearly, the assets and properties referred to supposedly originated from the government itself**. **To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury.**

3. ID.; ID.; ID.; ID.; ID.; ID.; TWO CONCURRING ELEMENTS NECESSARY.— [T]wo concurring elements to be present before assets or properties were considered as *ill-gotten wealth,* namely: (*a*) they must have "originated from the government itself," and (*b*) they must have been taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means*.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; COMPETENT EVIDENTIARY SUBSTANTIATION MADE IN APPROPRIATE JUDICIAL PROCEEDINGS, REQUIRED; REASONS.— It is well to point out, consequently, that the distinction laid down by E.O. No. 1 and its related issuances, and expounded by relevant judicial pronouncements unavoidably required *competent evidentiary substantiation* made in *appropriate judicial proceedings* to determine: (*a*) whether the assets or properties involved had come from the vast resources of government, and (*b*) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The requirement of *competent evidentiary substantiation* made in *appropriate judicial proceedings* was imposed because the factual premises for the reconveyance of the assets or properties in favor of the government due to their being ill-gotten wealth could not be simply assumed. x x x Accordingly, the Republic should furnish to the Sandiganbayan in proper judicial proceedings the competent evidence proving who were the close associates of President Marcos who had amassed assets and properties that would be rightly considered as *ill-gotten wealth.*

5. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; SPECIFIC DENIAL; THREE METHODS; APPLICATION OF THE FIRST METHOD IN THE CASE AT BAR.— In this jurisdiction, only a specific denial shall be sufficient to place into contention an alleged fact. Under Section 10, Rule 8 of the *Rules of Court*, a specific denial of an allegation of the complaint may be made in any of three ways, namely: (*a*) a defendant specifies each material allegation of fact the truth of which he does not admit and, whenever practicable, sets forth the substance of the matters upon which he relies to support his denial; (*b*) a defendant who desires to deny only a part of an averment specifies so much of it as is true and material and denies only the remainder; and (*c*) a defendant who is without

knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint states so, which has the effect of a denial. The express qualifications contained in paragraph 2.01 of Cojuangco's *Answer* constituted efficient specific denials of the averments of paragraph 2 of the Republic's *Amended Complaint* under the first method mentioned in Section 10 of Rule 8, *supra*. Indeed, the aforequoted paragraphs of the *Amended Complaint* and of Cojuangco's *Answer* indicate that Cojuangco thereby *expressly qualified* his admission of having been the President and a Director of the UCPB with the averment that the UCPB was a "private corporation;" that his *Answer*'s allegation of his being a member of the Board of Directors of the United Coconut Oil Mills, Inc. did not admit that he was a member of the Board of Directors of the CIIF Oil Mills, because the United Coconut Oil Mills, Inc. was not one of the CIIF Oil Mills; and that his *Answer* nowhere contained any admission or statement that he had held the various positions in the government or in the private corporations at the same time *and* in 1983, the time when the contested acquisition of the SMC shares of stock took place.

6. **ID.; EVIDENCE; ADMISSIONS; ELUCIDATED; ANY STATEMENT TO BE CONSIDERED AS AN ADMISSION FOR PURPOSES OF JUDICIAL PROCEEDINGS SHOULD BE DEFINITE, CERTAIN AND UNEQUIVOCAL; CASE AT BAR.—** What the Court stated in *Bitong v. Court of Appeals (Fifth Division)* as to admissions is illuminating: When taken in its totality, the *Amended Answer to the Amended Petition,* or even the *Answer to the Amended Petition* alone, clearly raises an issue as to the legal personality of petitioner to file the complaint. **Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side.** The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest. In other words, **while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit.**

Although acts or facts admitted do not require proof and cannot be contradicted, however, evidence *aliunde* can be presented to show that the admission was made through palpable mistake. **The rule is always in favor of liberality in construction of pleadings so that the real matter in dispute may be submitted to the judgment of the court.** x x x [T]he statements found under the heading of *Proposed Evidence* in the joint Pre-Trial Brief were incomplete and inadequate on the important details of the *supposed* transactions (*i.e.*, alleged borrowings and advances). As such, they could not constitute admissions that the funds had come from borrowings by Cojuangco, *et al.* from the UCPB or had been credit advances from the CIIF Oil Companies. Moreover, the purpose for presenting the records of the UCPB and the representatives of the UCPB and of the still unidentified or unnamed CIIF Oil Mills as declared in the joint Pre-Trial Brief did not at all show whether the UCPB and/or the unidentified or unnamed CIIF Oil Mills were the *only* sources of funding, or that such institutions, assuming them to be the sources of the funding, had been the *only* sources of funding. Such ambiguousness disqualified the statements from being relied upon as admissions. It is fundamental that any statement, to be considered as an admission for purposes of judicial proceedings, should be *definite*, *certain* and *unequivocal*; otherwise, the disputed fact will not get settled.

7. ID.; ID.; BURDEN OF PROOF; DEFINED; CASE AT BAR.— The burden of proof, according to Section 1, Rule 131 of the *Rules of Court*, is "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." Here, the Republic, being the plaintiff, was the party that carried the burden of proof. That burden required it to demonstrate through competent evidence that the respondents, as defendants, had purchased the SMC shares of stock with the use of public funds; and that the affected shares of stock constituted *ill-gotten wealth*. The Republic was well apprised of its burden of proof, first through the joinder of issues made by the responsive pleadings of the defendants, including Cojuangco, *et al*. The Republic was further reminded through the pre-trial order and the Resolution denying its *Motion for Summary Judgment, supra,* of the duty to prove the factual allegations on ill-gotten wealth against Cojuangco, *et al*. x x x With the Republic nonetheless choosing not to

adduce evidence proving the factual allegations, particularly the aforementioned matters, and instead opting to pursue its claims by *Motion for Summary Judgment*, the Sandiganbayan became completely deprived of the means to know the necessary but crucial details of the transactions on the acquisition of the contested block of shares. The Republic's failure to adduce evidence shifted no burden to the respondents to establish anything, for it was basic that the party who asserts, not the party who denies, must prove. Indeed, in a civil action, the plaintiff has the burden of pleading every essential fact and element of the cause of action and proving them by preponderance of evidence. This means that if the defendant merely denies each of the plaintiff's allegations and neither side produces evidence on any such element, the plaintiff must necessarily fail in the action. Thus, the Sandiganbayan correctly dismissed Civil Case No. 0033-F for failure of the Republic to prove its case by preponderant evidence.

8. **ID.; CIVIL PROCEDURE; SUMMARY JUDGMENT; EXPLAINED.—** A summary judgment under Rule 35 of the *Rules of Court* is a procedural technique that is proper only when there is no genuine issue as to the existence of a material fact and the moving party is entitled to a judgment as a matter of law. It is a method intended to expedite or promptly dispose of cases where the facts appear *undisputed* and *certain* from the pleadings, depositions, admissions, and affidavits on record. Upon a motion for summary judgment the court's sole function is to determine whether there is an issue of fact to be tried, and all doubts as to the existence of an issue of fact must be resolved *against* the moving party. In other words, a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and any doubt as to the existence of such an issue is resolved against the movant. Thus, in ruling on a motion for summary judgment, the court should take that view of the evidence most favorable to the party against whom it is directed, giving that party the benefit of all favorable inferences.

9. **ID.; ID.; ID.; GENUINE ISSUE; DEFINED.—** The term *genuine issue* has been defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith, and patently unsubstantial so as not to constitute a genuine issue for trial.

The court can determine this on the basis of the pleadings, admissions, documents, affidavits, and counter-affidavits submitted by the parties to the court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.

10. **ID.; ID.; ID.; A PARTY WHO MOVES FOR SUMMARY JUDGMENT HAS THE BURDEN OF DEMONSTRATING CLEARLY THE ABSENCE OF ANY GENUINE ISSUE OF FACT; SUMMARY JUDGMENT, NOT WARRANTED IN THE CASE AT BAR.—** Well-settled is the rule that a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact. Upon that party's shoulders rests the burden to prove the cause of action, and to show that the defense is interposed solely for the purpose of delay. After the burden has been discharged, the defendant has the burden to show facts sufficient to entitle him to defend. Any doubt as to the propriety of a summary judgment shall be resolved against the moving party. We need not stress that the trial courts have limited authority to render summary judgments and may do so only in cases where no genuine issue as to any material fact clearly exists between the parties. The rule on summary judgment does not invest the trial courts with jurisdiction to try summarily the factual issues upon affidavits, but authorizes summary judgment only when it appears clear that there is no genuine issue as to any material fact.

11. **MERCANTILE LAW; BANKING LAWS; REPUBLIC ACT NO. 337 (GENERAL BANKING LAW), AS AMENDED; DOSRI AND SINGLE BORROWER'S LIMIT RESTRICTIONS, NOT VIOLATED.—** The Republic's lack of proof on the source of the funds by which Cojuangco, *et al.* had acquired their block of SMC shares has made it shift its position, that it now suggests that Cojuangco had been enabled to obtain the loans by the issuance of LOI 926 exempting the UCPB from the DOSRI and the Single Borrower's Limit restrictions. We reject the Republic's suggestion. Firstly, as earlier pointed out, the Republic adduced no evidence on the significant particulars of the supposed loan, like the amount, the actual borrower, the approving official, *etc*. It did not also establish whether or not the loans were DOSRI or issued in violation of the Single Borrower's Limit. Secondly, the Republic

could not outrightly assume that President Marcos had issued LOI 926 for the purpose of allowing the loans by the UCPB in favor of Cojuangco. There must be competent evidence to that effect. And, finally, the loans, assuming that they were of a DOSRI nature or without the benefit of the required approvals or in excess of the Single Borrower's Limit, would not be void for that reason. Instead, the bank or the officers responsible for the approval and grant of the DOSRI loan would be subject only to sanctions under the law.

12. **ID.; CORPORATION LAW; CORPORATIONS; PRIVATE CORPORATION; BOARD OF DIRECTORS; NO VIOLATION OF FIDUCIARY DUTIES AS OFFICER AND MEMBER OF THE BOARD OF DIRECTORS IN THE CASE AT BAR.—** The conditions for the application of Articles 1455 and 1456 of the *Civil Code* (like the trustee using trust funds to purchase, or a person acquiring property through mistake or fraud), and Section 31 of the *Corporation Code* (like a director or trustee willfully and knowingly voting for or assenting to patently unlawful acts of the corporation, among others) require factual foundations to be first laid out in appropriate judicial proceedings. Hence, concluding that Cojuangco breached fiduciary duties as an officer and member of the Board of Directors of the UCPB *without competent evidence thereon* would be unwarranted and unreasonable. Thus, the Sandiganbayan could not fairly find that Cojuangco had committed breach of any fiduciary duties as an officer and member of the Board of Directors of the UCPB. For one, the *Amended Complaint* contained no clear factual allegation on which to predicate the application of Articles 1455 and 1456 of the *Civil Code*, and Section 31 of the *Corporation Code*. Although the trust relationship supposedly arose from Cojuangco's being an officer and member of the Board of Directors of the UCPB, the *link* between this alleged fact and the borrowings or advances was not established. Nor was there evidence on the loans or borrowings, their amounts, the approving authority, *etc*. As trial court, the Sandiganbayan could not presume his breach of fiduciary duties without evidence showing so, for fraud or breach of trust is never presumed, but must be alleged *and* proved.

13. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; LOAN; EXPOUNDED; THE RESULTING**

RELATIONSHIP BETWEEN A CREDITOR AND DEBTOR IN A CONTRACT OF LOAN CANNOT BE CHARACTERIZED AS FIDUCIARY.— The thrust of the Republic that the funds were *borrowed* or *lent* might even preclude any consequent trust implication. In a contract of loan, one of the parties (*creditor*) delivers money or other consumable thing to another (*debtor*) on the condition that the same amount of the same kind and quality shall be paid. Owing to the consumable nature of the thing loaned, the resulting duty of the borrower in a contract of loan is *to pay,* not *to return,* to the creditor or lender the very thing loaned. This explains why the ownership of the thing loaned is transferred to the debtor upon perfection of the contract. Ownership of the thing loaned having transferred, the debtor enjoys all the rights conferred to an owner of property, including the right to use and enjoy (*jus utendi*), to consume the thing by its use (*jus abutendi*), and to dispose (*jus disponendi*), subject to such limitations as may be provided by law. Evidently, the resulting relationship between a creditor and debtor in a contract of loan cannot be characterized as fiduciary.

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

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); PCGG RULES AND REGULATIONS; SECTION 3 THEREOF, CONSTRUED; SANDIGANBAYAN COMMITTED NO GRAVE ABUSE OF DISCRETION IN LIFTING THE WRITS OF SEQUESTRATION IN THE CASE AT BAR.— Section 3 of the PCGG Rules and Regulations promulgated on April 11, 1986 reads: Sec. 3. *Who may issue*. A writ of sequestration or a freeze or hold order may be issued by the Commission **upon the authority of at least two Commissioners**, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted. Respecting the lifting of the seven writs, the Sandiganbayan committed no grave abuse of discretion as their issuance violated the immediately-quoted provision of Section 3 of the PCGG Rules and Regulations. Indeed, the Sandiganbayan merely adhered to this Court's 1998

ruling in *Republic v. Sandiganbayan* which construed Section 3 to mean that the authority given by two commissioners for the issuance of a sequestration, freeze or hold order should be evident in the order itself. x x x The Republic, in fact, impliedly concedes that the seven writs of sequestration were tainted with violations of the two-commissioner rule.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE SUPREME COURT DOES NOT RESOLVE A QUESTION OF FACT.—** With respect to the lifting of the two other writs, Writ Nos. 86-0042 and 87-0218 which, albeit did not violate the two-commissioner rule, were lifted for lack of *prima facie* basis for their issuance, that involves a *factual* issue. It is settled that the Court does not resolve a question of fact, which exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); PCGG RULES AND REGULATIONS; WRIT OF SEQUESTRATION; THE ABSENCE OF A PRIOR DETERMINATION BY THE PCGG OF A *PRIMA FACIE* BASIS FOR THE SEQUESTRATION ORDER IS A FATAL DEFECT TO RENDER THE SEQUESTRATION OF A CORPORATION AND ITS PROPERTIES VOID *AB INITIO*.—** The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect to render the sequestration of a corporation and its properties void *ab initio*. That there are allegations in the subsequently filed complaint indicative of ill-gotten wealth does not prove *per se* that an actual deliberation or consideration of evidence was *priorly* made to arrive at the required quantum of proof for the issuance of the sequestration orders. As found by the Sandiganbayan, the records of the PCGG were either utterly silent or entirely insufficient on its compliance with this requirement. There were no minutes of any meeting leading to the issuance of Writ No. 86-0042 which was signed “for the commission” by Commissioner Mary Concepcion Bautista

on April 8, 1986. As for Writ No. 87-0218 which was issued on May 27, 1987, the only relevant document presented relates to the minutes of the May 26, 1987 meeting x x x. The dearth of any record from which a deliberation or derivation of a *prima facie* finding could be established renders nugatory the "*opportunity to contest*" afforded to a person whose property is sequestered.

4. **REMEDIAL LAW; SANDIGANBAYAN; JURISDICTION; THE MATTER OF THE LEGALITY AND PROPRIETY OF A SEQUESTRATION IS SUBJECT EXCLUSIVELY TO JUDICIAL ADJUDICATION BY THE SANDIGANBAYAN; SANDIGANBAYAN'S POWER DOES NOT INCLUDE THE POWER TO SEIZE IN THE FIRST INSTANCE PROPERTIES PURPORTING TO BE ILL-GOTTEN.—** The Republic goes on to fault the Sandiganbayan for denying its alternative prayer in its motion for reconsideration — for the issuance by the Sandiganbayan of an order of sequestration against the subject SMC shares in accordance with this Court's decision in the 1996 case of *Republic v. Sandiganbayan* x x x. Nowhere in the x x x Court's decision [in the 1996 case of *Republic v. Sandiganbayan*] was it mentioned that the Sandiganbayan has the power to issue a writ of sequestration similar to that vested in the PCGG. The quoted portion relates solely to the resolution of the second issue in that case — whether the Sandiganbayan has "jurisdiction over a motion questioning the validity of a 'sequestration order' issued by a duly authorized representative of the PCGG." In ruling in the affirmative, this Court settled that the matter of the *legality* and *propriety* of a sequestration, being an incident of the case, is subject "exclusively to judicial adjudication" by the Sandiganbayan. The Court therein emphatically reiterated that the remedies are always subject to the control of the Sandiganbayan which acts as the arbiter between the PCGG and the claimants. Moreover, the Court, in no uncertain terms, recognized that under no circumstance can a sequestration or freeze order be validly issued by one who is not a Commissioner of the PCGG. The Sandiganbayan's ample power referred to therein to control the proceedings refers to the issuance of ancillary orders or writs of attachment, upon proper application, to effectuate its judgment, but does *not* include the power to seize in the first instance properties purporting to be ill-gotten.

5. ID.; ID.; ID.; SANDIGANBAYAN BEREFT OF JURISDICTION TO ORDER THE ANNOTATION OF THE FOUR RESTRICTIVE CONDITIONS ON THE RELEVANT CORPORATE BOOKS OF SAN MIGUEL CORPORATION (SMC) DESPITE THE LIFTING OF THE WRITS OF SEQUESTRATION.— With regard to the order for the annotation of the four restrictive conditions on the relevant corporate books of the SMC, **despite** the lifting of the writs of sequestration, the Sandiganbayan was bereft of jurisdiction to do so. While it has ample power to make such interlocutory orders as may be necessary to ensure that its judgment would not be rendered ineffective, that is not a license for it to *motu proprio* issue every order it may deem fit. The intended annotation of the four conditions is akin to a notice of *lis pendens*, which applies only in an action affecting the title or right of possession of *real* property. The case involves *personal* property, however.

6. ID.; APPEALS; APPLICATION OF THE RULE AGAINST GRANTING AFFIRMATIVE RELIEFS TO A NON-APPEALING PARTY; ORDINARY APPEAL DISTINGUISHED FROM A SPECIAL CIVIL ACTION OF *CERTIORARI*.— *Prudential Bank & Trust Co. v. Reyes*, however, distinguishes an ordinary appeal from a *special civil action of certiorari*, insofar as the application of the rule against granting affirmative reliefs to a non-appealing party is involved. On the one hand, it is settled that in ordinary appeals a party who did not appeal cannot seek affirmative relief other than the ones granted in the disputed decision. An appellant can assign as many errors as he may deem to be reversible. On the other hand, resort to a judicial review in a petition for *certiorari* is confined to issues of want or excess of jurisdiction and grave abuse of discretion that go into the validity of the challenged issuance.

7. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; QUESTION OF FACT DISTINGUISHED FROM QUESTION OF LAW; PETITION IN G.R. NO. 180702 RAISED A QUESTION OF LAW; ELUCIDATED.— The distinction between "questions of law" and "questions of fact" has long been settled. There is a question of law when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence

presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct is a question of law. Whether a question is one of law or of fact is not determined by the appellation given to such question by the party raising it; rather, it is whether a court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. The resolution of the issues involved in G.R. No. 180702 does not entail a reevaluation of the probative value of documentary evidence or the credibility of witnesses, for none was presented during the trial. The Court needs only to look into the **pleadings** and the **parties' submissions** without necessarily going into the truth or falsity thereof. Any review would only be limited to the inquiry of whether the law was properly applied given the submissions which are part of the record, the fact of filing of which is not contested by the parties. Since the petition assails the correctness of the conclusions drawn by the Sandiganbayan from the set of facts it considered, the question is one of law.

8. ID.; CIVIL PROCEDURE; PRE-TRIAL; PRE-TRIAL BRIEF; PARTIES ARE BOUND BY THE REPRESENTATIONS AND STATEMENTS IN THEIR PRE-TRIAL BRIEFS; SANDIGANBAYAN'S FINDING THAT THE SOURCES OF FUNDS USED TO ACQUIRE THE SMC SHARES IS NOT A DISPUTED FACT.— The Sandiganbayan's finding that the "'various sources' of funds" that respondents used to acquire the subject SMC shares is a disputed fact is inaccurate. x x x The Sandiganbayan's finding totally disregards the statements of respondents in their joint Pre-Trial Brief that they obtained loans and credit advances from the UCPB and CIIF Oil Mills for the purchase of the subject SMC shares. x x x Evidently, the identity of the various sources in funding the stock purchase became pronounced during the pre-trial. **The statements are clear admission on respondents' part that the purchase price of the subject SMC shares were paid, either in whole or in part, out of loans and credit advances from the UCPB and CIIF Oil Mills**. x x x **Respondents having admitted that such loans and credit advances funded the acquisition of the SMC shares, the plaintiff-Republic did not have to**

present proof thereof anymore. For judicial admissions do *not* require proof to establish that UCPB loans and CIIF Oil Mills credit advances financed the stock purchase transaction of subject SMC shares. x x x. Indeed, the Rules re-echo that "[t]he parties are bound by the representations and statements in their respective pre-trial briefs." x x x One such admission is the submission in Cojuangco, *et al.*'s joint Pre-Trial Brief that revealed the **identity of the loans as advances from CIIF Oil Mills and loans from UCPB.** They are bound by this representation in their Pre-Trial Brief, at least, insofar as the basic fact that the borrowings were obtained from CIIF Oil Mills and UCPB.

9. **ID.; EVIDENCE; JUDICIAL ADMISSIONS ARE GENERALLY CONSIDERED CONCLUSIVE TO THE CONCERNED PARTY; EXCEPTION; IN THE CASE AT BAR, RESPONDENTS' JUDICIAL ADMISSIONS EVENTUALLY SOLIDIFIED WHEN THEY DID NOT GO TO TRIAL TO MODIFY THEIR EARLIER ADMISSIONS.—** Judicial admissions are **generally considered conclusive** to the concerned party. Certain jurisprudence, however, provides the admitting party some **leeway to vary or override such admissions,** provided the matter is identified as an issue and the admitting party presents contrary evidence during trial. In one case, it was held: In addition, despite Urdaneta City's judicial admissions, the trial court is still given leeway to consider other evidence to be presented for said admissions may not necessarily prevail over documentary evidence, *e.g.*, the contracts assailed. A party's testimony in open court may also override admissions in the Answer. On the premise that the admissions were not conclusive prior to trial, Cojuangco, *et al.*, however, did not go to trial even to attempt to modify their earlier judicial admissions. Hence, their judicial admissions eventually solidified.

10. **ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; NEGATIVE ALLEGATIONS NEED NOT BE PROVED EVEN IF ESSENTIAL TO ONE'S CAUSE OF ACTION OR DEFENSE IF THEY CONSTITUTE A DENIAL OF THE EXISTENCE OF A DOCUMENT THE CUSTODY OF WHICH BELONGS TO THE OTHER PARTY.—** *Herrera v. Court of Appeals* teaches that **it is not incumbent upon the plaintiff to adduce positive evidence to support a**

negative averment (*i.e.*, acquired *without* using private funds) the truth of which is fairly indicated by established circumstances and **which, if untrue, could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control**. Even assuming *arguendo* that "without using private funds" is elemental to the cause of action of the plaintiff who must bear the burden of proof, *Philippine Savings Bank v. Geronimo* instructs that "**negative allegations need not be proved** even if essential to one's cause of action or defense **if they constitute a denial of the existence of a document the custody of which belongs to the other party**." This category of relevant facts that need not be proven by evidence is identified as "*facts peculiarly within the knowledge of the opposite party*." Cojuangco, *et al.* could have simply presented in evidence documents under their custody, if any, to show that other financial resources were used to finance the stock purchase, which may have qualified, on allowable grounds, their earlier judicial admission and accordingly crumbled the plaintiff's case into fractions. Whichever way of looking at the matter of "non-usage or usage of private funds" – either as a "negative averment" on the part of the Republic or an "affirmative defense" on the part of Cojuangco, *et al.* — the bottom line remains the same: the burden of evidence that there were other loans that partly funded the purchase of the SMC shares was borne by Cojuangco, *et al.*, failing which is fatal to them.

11. ID.; ID.; ID.; THE PARTY UPON WHOM THE ULTIMATE BURDEN LIES IS TO BE DETERMINED BY THE PLEADINGS, NOT BY WHO IS THE PLAINTIFF OR THE DEFENDANT.— Cojuangco admitted in the present case that he purchased the SMC shares of stock but averred that he used the proceeds of certain loans to finance the purchase of the SMC shares. This defense by way of avoidance of the plaintiff's claim could have buttressed the defendants' claim that not a single peso of public money was used in buying the shares. Cojuangco, however, took a similar route in the present case, despite the myriad of admissions, judicial notices, and *prima facie* circumstances that, absent any varying evidence, consequently fortified the Republic's case. Indeed, "**in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, *not* by who is**

the plaintiff or the defendant." After the trial (or the lack thereof despite the trial settings), it became clear that the **borrowings from CIIF Oil Mills and UCPB exclusively funded the purchase of the SMC shares.**

12. **POLITICAL LAW; PRESIDENTIAL DECREE NO. 755; COCONUT LEVY FUNDS; REMAINED PUBLIC IN CHARACTER UPON THEIR TRANSFER FROM THE PHILIPPINE COCONUT AUTHORITY TO THE UCPB.—** Since the UCPB was **acquired** by the government using the coconut levy funds, and "all assets acquired therefrom" are *prima facie* public in character, it follows that the coco levy funds remained public in character upon their transfer, pursuant to Presidential Decree (P.D.) No. 755, from the Philippine Coconut Authority to the UCPB. The funds remained in the government's possession throughout the entire transaction.

13. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS, BURDEN OF EVIDENCE AND *PRIMA FACIE* EVIDENCE, DEFINED; APPLICATION IN THE CASE AT BAR.—** Given the Court's pronouncement that coconut levy funds are *prima facie* public in nature, the holder of shares of stock that trace their roots from such funds must, in light of the immediately-quoted portion of the Court's decision in the 2007 case of *Republic v. Sandiganbayan (First Division),* overcome the *prima facie* presumption or otherwise prove that the shares are legitimately privately owned. In view of that opportunity that was yet to be availed by respondents during trial, the Sandiganbayan exercised sound discretion in denying the plaintiff's motion for summary judgment by the assailed Resolution in G.R. No. 166859. A court, when confronted with this situation, is justified in not granting a summary judgment. This marked difference provides an alert tab for courts to proceed to trial. The same posture cannot stand, however, with respect to the Sandiganbayan's subsequent Decision of November 28, 2007, challenged in G.R. No. 180702, wherein respondents already abstained from presenting countervailing evidence after affording them the chance. In other words, Cojuangco, *et al.* failed to overcome the *prima facie* public character of the nature of the SMC shares as fruits of pubic funds. Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence

in civil cases. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment. Upon the plaintiff in a civil case, the burden of proof never parts, though in the course of trial, once the plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case; otherwise, a verdict must be returned in favor of the plaintiff. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of trial. The term *prima facie* evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts. *Prima facie* means it is "sufficient to establish a fact or raise a presumption unless disproved or rebutted." **In fine, plaintiff having shown that the SMC shares came into fruition from coco levy funds that are *prima facie* public funds, it was incumbent upon respondents to go forward with contradicting evidence. *This they did not do.***

14. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 2 (1986); ILL-GOTTEN WEALTH, DEFINED.— E.O. No. 2 describes ill-gotten assets as, *inter alia*, shares of stock acquired through ***or*** as a result of the improper or illegal use of or the conversion of funds or properties owned by the Government or its branches, instrumentalities, enterprises, banks or financial institutions.

15. ID.; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; UCPB IS A GOVERNMENT-OWNED AND CONTROLLED CORPORATION; RESPONDENT COJUANGCO WAS A PUBLIC OFFICER DURING THE MARCOS ADMINISTRATION.— Since appointment as member of the PCA Board is made by the President, judicial notice of Cojuangco's appointment by then President Marcos as PCA Director must be also taken, it being an official act of the executive department of the Philippines. A sampling of available public records in the form of PCA annual reports confirms that Cojuangco was a member of the governing board of the PCA in the early 1980s. With respect to the UCPB, Cojuangco's description of it as a "*private* corporation" does not bind the Court and cannot lend support to the proposition that the period during which he was the UCPB President and Director is not

within the scope of his subsequent admission as a "*public* officer during the Marcos Administration." **UCPB was a public corporation during the period material to the complaint.** Paragraph 13, Section 2 of the Administrative Code of 1987 provides: (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations. x x x Given the extent of government ownership of its shares of stock, the public nature of the funds in its control, the purpose for which it was acquired, and the manner of its acquisition, UCPB was thus a government-owned and controlled corporation (GOCC). Cojuangco, as then President and Member of the Board of Directors of UCPB, was thus, indeed, a public officer during the Marcos Administration.

16. ID.; ID.; ID.; ID.; FIDUCIARY DUTY, DEFINED; FIDUCIARY, ELUCIDATED; BREACH OF FIDUCIARY DUTY AS A DIRECTOR, ESTABLISHED IN THE CASE AT BAR.— It having been established that Cojuangco was a Director of PCA, a government entity, and a President and Director of UCPB, a GOCC, his act of acquiring loans and credit advances from UCPB and the CIIF Oil Mills in order to purchase the subject SMC shares through the various Cojuangco companies was **in violation of his fiduciary duty as director.** "Fiduciary duty" has been defined as "a duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law. "Fiduciary" connotes a very broad term embracing both technical relations and those informal relations which exist wherever one person trusts in or relies upon another; one founded on trust or confidence reposed by one person in the integrity and fidelity of another. Such relationship arises

whenever confidence is reposed on one side, and domination and influence result on the other; the relation can be legal, social, domestic, or merely personal. It is a relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other.

17. MERCANTILE LAW; CORPORATION CODE; SECTIONS 31 AND 34 THEREOF; VIOLATED IN THE CASE AT BAR.— [I]n view of the public nature of the funds involved, Cojuangco became a fiduciary not only of the **entities** involved but also of the **public funds**. As stated in *Gokongwei*, a director cannot serve himself first and his *cestuis* (the corporations and the public) second or use his power as such director or officer for his personal advantage or preference. Since the avowed purpose for which UCPB was acquired by the government was to administer the coco levy funds to provide them with "readily available credit facilities at preferential rates," Cojuangco, **in buying the SMC shares** through the loans he obtained from UCPB and CIIF Oil Mills **for his own benefit**, **violated his fiduciary obligations by *self-dealing*,** an act proscribed under the Corporation Code, Sections 31 and 34 of which read: **Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees** who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation **or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.** x x x **Sec. 34.**

Disloyalty of a director. — **Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same,** unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.

18. POLITICAL LAW; PRESIDENTIAL DECREE NO. 961; SECTION 9 THEREOF; INVESTMENTS MUST BE FOR THE BENEFIT OF THE COCONUT FARMERS; VIOLATED IN THE CASE AT BAR.— Under Section 9 of P.D. No. 961, what UCPB was, at most, authorized to invest in were shares of stocks in corporations engaged in businesses *related to the coconut and palm oil industry* of which SMC, then primarily engaged in the food and beverage industries, may not be considered covered. The provision adverted to reads: **Section 9.** *Investments For the Benefit of the Coconut Farmers.* Notwithstanding any law to the contrary, the bank acquired for the benefit of the coconut farmers under P.D. 755 is hereby given full power and authority **to make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and the operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oils industry in all its aspects and the establishment of a research into the commercial and industrial uses of coconut and other palm oil industry**. For that purpose, the Authority shall, from time to time, ascertain how much of the collections of the Coconut Consumers Stabilization Fund and/or the Coconut Industry Development Fund is not required to finance the replanting program and other purposes herein authorized and such ascertained surplus shall be utilized by the bank for the investments herein authorized. But even assuming *arguendo* that UCPB's investing in SMC shares would have been allowed under the above provision, still, such investments could only have been made for and in behalf of the coconut farmers, and NOT for and in behalf of a single individual or Cojuangco alone.

19. MERCANTILE LAW; BANKING LAWS; REPUBLIC ACT NO. 337 (GENERAL BANKING LAW), AS AMENDED; SECTION 83 THEREOF; DIRECTORS AND/OR OFFICERS OF A BANKING INSTITUTION ARE PROHIBITED FROM EITHER DIRECTLY OR INDIRECTLY BORROWING ANY OF THE DEPOSITS OF FUNDS OF SUCH BANKS EXCEPT WITH THE WRITTEN APPROVAL OF ALL THE DIRECTORS OF THE BANK; VIOLATED IN THE CASE AT BAR.— As President and Director of UCPB, Cojuangco was also violating Section 83 of Republic Act No. 337 or the General Banking Law, as amended by P.D. No. 1795, the law in force at that time which prohibited directors and/or officers of a banking institution from either directly or indirectly borrowing any of the deposits of funds of such banks *except* with the written approval of all directors of the bank. x x x Cojuangco and the Cojuangco companies having admitted in their joint Pre-Trial Brief that the SMC shares were actually purchased with proceeds from loans and credit advances from UCPB and the CIIF Oil Mills, and having foregone the opportunity during trial to show that a written authority from the UCPB's Board of Directors was secured before contracting said loans, ineluctably, **Cojuangco violated the old banking law.** That President Marcos issued Letter of Instructions (LOI) No. 926 (September 3, 1979) that paved the way for the acquisition of UCPB as the bank that would administer the lending of coco levy funds and which, in effect, exempted borrowings from the UCPB from the usual loan restrictions, is of no moment. Section 4 of LOI No. 926 provides: Sec. 4. Financial Borrowings — **All financial borrowings of the private corporation authorized to be organized as well as any Participating Mill to finance their respective capital expenditures including purchase of spare parts and inventories shall be expeditiously and promptly approved, and such borrowings are hereby declared exempt from restrictions/limitations**: on simple borrower's limitations; and on loans to corporations with interlocking directors, officers, stockholders, related interests and subsidiaries and affiliates**, it being understood that such lendings are in effect made to the coconut industry as a whole and not to any particular individual or entity**. Clearly, the exemption granted in LOI No. 926 only extended to *corporate* borrowings, not to individual borrowings.

20. CIVIL LAW; TRUST; CONSTRUCTIVE TRUST; DEFINED; IN THE CASE AT BAR, A CONSTRUCTIVE TRUST WAS FORMED IN FAVOR OF THE COCONUT FARMERS WHO SHOULD HAVE BENEFITED FROM THE COCONUT LEVY FUNDS.— It having been established that Cojuangco engaged in prohibited conflict-of-interest transactions by buying the SMC shares using coco levy funds being administered by the UCPB and CIIF Oil Mills for his own benefit, it follows that <u>a **constructive trust** was formed in favor of the coconut farmers who should have benefited from such funds</u>. The Civil Code provides: Art. 1455. When any trustee, guardian, or other person **holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, <u>a trust is established by operation of law in favor of the person to whom the funds belong</u>**. A constructive trust is "a right of property, real or personal, held by one party for the benefit of another; that there is a fiduciary relation between a trustee and a *cestui que trust* as regards certain property, real, personal, money or choses in action." That under Article 1455 there must be a breach of fiduciary relation and profit or gain resulting therefrom in order for a constructive trust to be created in favor of that legally entitled to it, *Huang v. Court of Appeals* underscores: A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. The duty to convey the property arises because it was acquired through **fraud, duress, or abuse of confidence, undue influence** or mistake or **breach of fiduciary duty** or through the wrongful disposition of another's property.

21. ID.; ID.; ID.; FRAUD NEED NOT BE PRESENT; ELUCIDATED.— Fraud in this kind of trust in fact need not even be present. The landmark case of *Severino v. Severino* enlightens: A receiver, trustee, attorney, agent, or any other person occupying fiduciary relations respecting property or persons, is utterly disabled from acquiring for his own benefit the property committed to his custody for management. **This rule is entirely <u>independent of the fact whether any fraud has intervened. No fraud in fact need be shown, and no excuse will be heard from the trustee</u>.** It is to avoid the

necessity of any such inquiry that the rule takes so general a form. **The rule stands on the moral obligation to refrain from placing one's self in positions which ordinarily excite conflicts between self-interest and integrity. It seeks to remove the temptation that might arise out of such a relation to serve one's self-interest at the expense of one's integrity and duty to another, by making it impossible to profit by yielding to temptation.** It applies universally to all who come within its principle.

22. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; BURDEN OF PROOF OF FRAUD; EXISTENCE OF A FIDUCIARY RELATION IS AN EXCEPTION THERETO.— Even assuming *arguendo* that fraud is material, the rule on the burden of proof of fraud, as the majority insists, does not apply in the present case. Authorities on evidence cite the existence of a fiduciary relation as an exception: The law, in the absence of the existence of any fiduciary relation, never presumes fraud, dishonesty, or bad faith; on the contrary, the presumption is in favor of good faith and honesty until the contrary appears x x x However, **when a fiduciary relation exists between the parties to a transaction, the burden of proof of its fairness is upon the fiduciary. He must show that there was no abuse of confidence, that he has acted in good faith, and the act by which he is benefited was the free, voluntary, and independent act of the other party, done with full knowledge of its purpose and effect**. Examples of such relationships may be seen in the case of husband and wife, attorney and client, **directors of a corporation and the corporation**, or any other relationship of an intimate and fiduciary character. A fiduciary seeking to profit by a transaction with the one who confided in him has the burden of showing that he communicated to the other not only the fact of his interest in the transaction, but all information he had which it was important for the other to know in order to enable him to judge the value of the property. x x x Since Cojuangco was a fiduciary, the burden of evidence on the fairness of the questionable transactions was shifted to him. He failed to discharge this burden. In other words, contrary to the view of the majority, it was not incumbent upon the Republic to adduce evidence on the particular details of the loans and credit advances for it was Cojuangco's burden to establish the

regularity of these transactions. I am not "second-guessing," as the majority points out, for I am justified to deem the irregularity or illegality thereof as established after Cojuangco refused to discharge his burden. The intentional concealment of facts as to render secretive the assailed loan transactions entered into by a fiduciary must be, as enunciated by the above-cited rule, taken against Cojuangco, he being the fiduciary.

23. **CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(i) THEREOF, VIOLATED IN THE CASE AT BAR.—** Section 3(i) of Republic Act No. 3019 prohibits a public officer from becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

24. **ID.; REVISED PENAL CODE; ARTICLE 216 THEREOF; POSSESSION OF PROHIBITED INTEREST BY A PUBLIC OFFICER; VIOLATED IN THE CASE AT BAR.—** Article 216 of the Revised Penal Code prohibits public officers from directly or indirectly, becoming interested in any contract or business in which it is his official duty to intervene. x x x With respect to Article 216 of the Revised Penal Code, Cojuangco had a hand in how the funds were to be utilized and in choosing the recipients of the loans and credit advances. For him to purchase SMC shares with proceeds from loans sourced from the coconut levy funds was a clear violation of Article 216. What is proscribed is the mere possession of the prohibited interest. It does not matter whether he actually approved the transaction or actually intervened in the contract or business. Moreover, proof that actual fraud was committed against the government is not required, for the act is punished because of the possibility that fraud may be committed or that the officer may place his personal interest above that of the government.

25. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; CATEGORIES OF FACT THAT NEED NOT BE PROVEN BY EVIDENCE.—** The **categories of facts that need not be proven by evidence** were enumerated by this Court in one case that expounded on Section 1 of

Rule 131 of the Rules of Court, as follows: *Burden of proof.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his **claim or defense** by the amount of evidence required by law. Obviously, the burden of proof is, in the first instance, with the plaintiff who initiated the action. **But in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, not by who is the plaintiff or the defendant**. The test for determining where the burden of proof lies is to ask which party to an action or suit will fail if he offers no evidence competent to show the facts averred as the basis for the relief he seeks to obtain, and based on the result of an inquiry, which party would be successful if he offers no evidence. In ordinary civil cases, **the plaintiff has the burden of proving the material allegations of the complaint which are denied by the defendant,** and **the defendant has the burden of proving the material allegations in his case where he sets up a new matter**. All facts in issue and relevant facts must, as a general rule, be proven by evidence except the following: (1) Allegations contained in the complaint or answer immaterial to the issues. (2) Facts which are admitted or which are not denied in the answer, provided they have been sufficiently alleged. (3) Those which are the subject of an agreed statement of facts between the parties; as well as those admitted by the party in the course of the proceedings in the same case. (4) Facts which are the subject of judicial notice. (5) Facts which are legally presumed. (6) Facts peculiarly within the knowledge of the opposite party. The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created thereby which if no proof to the contrary is offered will prevail; it does not shift the burden of proof.

BRION, *J.*, *dissenting opinion:*

1. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PRE-TRIAL BRIEF; A PARTY'S STATEMENT IN THE PRE-TRIAL BRIEF IS NOT A MERE PROPOSAL BUT A DIRECT ADMISSION OF WHAT WOULD SUPPORT HIS/HER MATERIAL ALLEGATION; CASE AT BAR.— I agree with Justice Carpio Morales** that Cojuangco did indeed admit in his pre-trial brief that the funds used in the purchase of

SMC shares were sourced from UCPB loans and CIIF Oil Mills advances. Cojuangco's *Pre-Trial Brief* made a categorical statement of the evidence he would present at the trial. This statement is quoted verbatim at page 5 hereof. x x x Justice Bersamin dismisses these statements as ***mere proposals*** of Cojuangco which do not constitute an admission that the funds in the purchase of the SMC shares came from the UCPB loans and the CIIF Oil Mills advances. "[T]he statement were merely being proposed, that is, they were not yet offered or were not yet intended as admissions of any fact stated therein." With due respect, Justice Bersamin's contention fails to consider a party's intent and representation in stipulating on the evidence he proposes to present during trial; by his stipulation, the party thereby ***claims – and thus admits*** – that the evidence he pointed to would substantiate the material averments in his pleadings. x x x In his *Pre-Trial Brief*, however, what he *generally* claimed in his Answer became *concrete* when he represented that these pieces of evidence consist of UCPB documents and testimonies of witnesses from UCPB and CIIF Oil Mills. As no evidence can be considered during trial unless they have been identified during pre-trial, this identified evidence substantiating the material allegation in his *Answer* is effectively an admission of what the various sources of funding were. In other words, the respondents identified the various sources of funds alleged in his *Answer* when he offered in his *Pre-Trial Brief* to support this allegation through documents from UCPB and the testimonies of witnesses from UCPB and CIIF Oil Mills on loan and credit advances. The statement in Cojuangco's *Pre-Trial Brief* is thus not a mere proposal but a direct admission of what would support his material allegation. Indeed, it is ridiculous for a party to stipulate on documents and witnesses he would present as evidence if these were not intended to support his position. To be sure, a defendant may choose not to present evidence should the plaintiff fail to support its claims, but his desistance is not due to any change of position but due to the lack of need to support his position; a defendant cannot radically change his theory of the case and deny his earlier statements depending on what the plaintiffs present as evidence.

2. ID.; ID.; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; ALLEGATIONS WHICH ARE NOT SPECIFICALLY DENIED ARE DEEMED ADMITTED;

APPLICATION IN THE CASE AT BAR.— Cojuangco also failed to specifically deny the allegation in paragraph 14(l) of the Republic's *Complaint* that UCPB and CIIF Oil Mills loans were used to purchase SMC stocks. Under the Rules of Court, what is not denied is deemed admitted. x x x [Cojuangco's] bare statement that he did not use coconut levy funds to acquire his shareholding in SMC is a mere general allegation that does not negate the Republic's material averment that UCPB loans, among others, funded the purchase of the SMC shares. Section 10, Rule 8 of the Rules of Court requires a defendant to "specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial." Otherwise, material averments in the complaint are deemed admitted. It was only in his *Pre-Trial Brief* that Cojuangco qualified his general averment that the SMC shares were not bought with coconut levy funds.

3. **POLITICAL LAW; PRESIDENTIAL DECREE NO. 1468; COCONUT INDUSTRY INVESTMENT FUND (CIIF); CIIF OIL MILLS CREDIT ADVANCES ARE PUBLIC IN NATURE; EXPLAINED.—** The determination of whether CIIF Oil Mills advances are public funds does not present a major hurdle. A simple tracing of the organization and funding of the CIIF Oil Mills to the coconut levy fund establishes the link that marks the fund as public. The coconut levy fund is a collective term referring to various funds that came from "levies on sale of copra or equivalent coconut products exacted for the most part from coconut farmers." x x x Pursuant to PD No. 1468 (which revised PD No. 961 or the Coconut Industry Code), portions of the CCSF and the CIDF that were not required for the replanting program and other authorized projects shall be used to "make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oil industries." The surplus of the CCSF and the CIDF came to be known as the Coconut Industry Investment Fund or CIIF, and the corporations in which the CIIF was invested were known as CIIF companies. In the 1993 *Republic v. Sandiganbayan* declared that — "x x x coconut levy funds being clearly affected with public interest, it follows

that the corporations formed and organized from those funds, and all assets acquired therefrom, should also be regarded as clearly affected with public interest." Since the CIIF Oil Mills and the holding companies were organized/acquired and funded using the coconut levy funds, it follows that the oil mills and all their assets, including their investments, are public funds. This is the basic reason underlying the partial judgment on the CIIF block of SMC shares; the funds used in the purchase of these shares are public so that the shares purchased rightfully belong to the Republic.

4. **ID.; LETTER OF INSTRUCTION NO. 926 (SEPTEMBER 3, 1979); UNITED COCONUT PLANTERS BANK (UCPB); INVESTMENTS MADE BY UCPB, DIRECTLY OR INDIRECTLY, AS ADMINISTRATOR OF COCONUT LEVY FUND BECAME IMPRESSED WITH PUBLIC CHARACTER; EXPOUNDED.—** With the government's acquisition of UCPB through the PCA using coconut levy funds, all collections from the imposition of the coconut levies were required to be deposited, interest free, with UCPB. The deposited coconut levy fund was primarily allotted to serve the credit requirements of the coconut farmers by providing them, upon proper authorization, with credit facilities at preferential rates. Through decrees subsequently promulgated by President Marcos, UCPB was also given "full power and authority" to invest the surplus of the coconut levy fund, in acquiring *shares of corporations engaged in the coconut and palm oil industries*. In this manner, UCPB became not only the depositary, but also the administrator, of the coconut levy fund. Thus, investments made by UCPB, directly or indirectly, as administrator of the coconut levy fund became impressed with public character; they were public investments even if made in the form of a loan to a private entity since they were sourced from a public fund and made pursuant to a declared national policy. In *Republic v. COCOFED*, we ruled that if the money is allocated for a special purpose and raised by a special means, it is public in character. Government funds deposited in a bank remain as government funds; "even assuming that these become commingled with other funds of the bank, this does not remove the character of the fund as a credit representing government funds thus deposited."

5. **ID.; ID.; ID.; AS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION, UCPB'S ASSETS ARE GOVERNMENT ASSETS; FUNDS THAT IT LENDS OUT ARE PUBLIC FUNDS.—** While functioning as depositary and administrator of the coconut levy fund, UCPB also continued to function as a commercial bank one of whose activities is the extension of loans to clients. Based on its genesis and the purposes it serves, UCPB is not simply a commercial bank; it is a bank owned and controlled by the government because of the ownership of its shares, the control that government exercises, and the purposes that it serves; it is specifically a government arm in the banking industry to serve the specific needs of coconut farmers through the administration of the deposited coco levy funds and by serving as a specialized coconut farmers' bank. As a government-owned or controlled corporation, UCPB's assets are government assets and its funds are subject to audit by the Commission on Audit. Thus, the funds that it lends out are public funds; any private ownership in its corporate structure is confined to the minority privately-held shares, which do not detract from the character of the bank as a government-owned and controlled corporation.

6. **MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; *ULTRA VIRES* ACTS OF CORPORATIONS; A LOAN OR ADVANCE TO A DIRECTOR IS NOT *PER SE ULTRA VIRES*; CASE AT BAR.—** Section 45 of the Corporation Code states: Section 45. *Ultra vires acts of corporations*.—No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred. It should be noted that what is *ultra vires* or beyond the power of the corporation must also be *ultra vires* or beyond the power of its board of directors to undertake. The powers of the board of directors, who under the law are authorized to exercise the powers of the corporation, are necessarily limited by restrictions imposed by law on the corporation, as these restrictions are necessarily imposed also on the board of directors who act in behalf of the corporation. As earlier stated, the purpose of UCPB was to provide readily available credit for coconut farmers. PD No. 755 confirms this purpose x x x Under these terms, if the

Republic had been able to prove that the amount of the loans to Cojuangco were so substantial that they covered the funds reserved for the use of coconut farmers, then a case can be made that the grant of the loan was an *ultra vires* act. What the Republic claimed in its Memorandum of January 19, 2007 — that it should have been UCPB and CIIF Oil Mills and not the respondents who should have purchased the subject shares — would also apply. However, if the amount that Cojuangco borrowed consisted of funds that the UCPB could use for other investments, then no sufficient basis exists under the *ultra vires* rule to claim that the loans granted to Cojuangco for the purchase of SMC shares had been contrary to UCPB's purpose under PD No. 755. Under this situation, UCPB's grant of the loan for the purchase of SMC shares, by itself, would not constitute an *ultra vires* act, unless the Republic specifies some other irregularity whose consequence is to make the act *ultra vires*.

7. ID.; ID.; ID.; BREACH OF FIDUCIARY DUTIES AS DIRECTOR AND OFFICER OF UCPB; ESTABLISHED IN THE CASE AT BAR.— The grant of loans to Cojuangco, who was a director and officer of UCPB at the time that the shares were purchased, raises propriety questions under Sections 31 and 34 of the Corporation Code. x x x As early as 1929, the Court recognized the rule that directors of a corporation are bound to care for its property and manage its affairs in good faith. If a violation of these duties results in the waste of corporate assets or injury to corporate property, the directors, like other trustees, are liable for the waste or injury. If they perform acts clearly beyond their power, whereby loss ensues to the corporation, or dispose of its property or pay away its money without authority, they will be required to pay for the loss out of their private assets. x x x The directors of a corporation hold positions of trust and as such, they owe a duty of loyalty to their corporation. In case their interests conflict with those of the corporation, they cannot sacrifice the latter for their own advantage and benefit. This trust relationship is not a matter of statutory or technical law; it springs from the fact that directors have the control and guidance of corporate affairs and property and, hence, of the property and interests of the stockholders. In *Bailey v. Jacobs*, the Supreme Court of Pennsylvania held that directors and officers must act in utmost good faith and cannot

deal with the funds and property of the corporation, nor utilize the influence and advantage of their offices, for any but the common interest. If they make a personal profit through the use of corporate assets, they must account for it to the stockholders. It is immaterial that their dealings may not have caused a loss or been harmful to the corporation; the test of liability is whether they have been unjustly enriched. On the surface, the present case is similar to *Bailey* where a director had used so-called advances from the corporation to purchase stocks of another company. Cojuangco appears to have betrayed the interests of UCPB when he purchased for himself the SMC shares using UCPB funds, when the same funds could have been used by UCPB to purchase the said shares for itself as administrator of the coconut levy funds. Thus, the benefits of the sale of the SMC shares should accrue to the UCPB. This conclusion, however, can be a rash judgment because the present case lacks the evidentiary support that *Bailey* enjoyed; the supporting evidence is not at all certain — a consequence of the Republic's failure to proceed to full-blown trial.

8. ID.; BANKING LAWS; REPUBLIC ACT NO. 337 (GENERAL BANKING ACT), AS AMENDED; VIOLATION OF SINGLE-BORROWERS LIMIT AND DOSRI RULES; NOT ESTABLISHED.— Cojuangco claims exemption from x x x [Sections 23 and 83 of the General Banking Act, as amended] on the strength of Letter of Instructions No. (*LOI*) 926. I agree with the *ponencia*, however, that Cojuangco cannot seek refuge under this LOI, since the exemption covers only the borrowings of participating oil mills and private corporations organized to serve as instruments to pool and coordinate the resources of the coconut farmers and oil millers, not those of individuals such as Cojuangco or the respondent corporations who acted as nominal stockholders. LOI 926, too, required the loans to be used to finance *capital expenditures*, not investments in shares of stock. Despite this view, however, I disagree that the Republic successfully established that these provisions were violated or that these laws can be the basis for the return of the SMC shares. To reiterate, the Republic has neither stated nor proved the amount of the UCPB loans taken to purchase the SMC shares or the unimpaired capital or the surplus of UCPB; it utterly failed to support the details of whatever loans had been taken with sufficient evidence. Thus,

the Court cannot declare that the 15% limitation under the single borrower's limit was breached. Similarly, there can be no violation of the DOSRI rules where the manner under which the loan was taken was not alleged; the Republic failed to prove whether or not the UCPB board of directors approved the loans in question.

9. **POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 1 (1986); PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; ILL-GOTTEN WEALTH; CLOSE ASSOCIATION WITH FORMER PRESIDENT MARCOS; NOT PROVEN IN THE CASE AT BAR.—** A close examination of the records fails to reveal any specific allegation, much less proof, that Cojuangco amassed ill-gotten SMC shares because he is a relative or was a close associate of the late President Ferdinand Marcos. While the media may be replete with stories of Cojuangco's close relationship with President Marcos and his family, these stories are not evidence unless testified to by a competent witness or are materials that can be subject of judicial notice. At the most, what appears in the offered evidence in this case are admissions by Cojuangco of the positions he assumed in government, specifically at the PCA and at the UCPB. The Republic's *Reply* dated October 2, 2003, too, contained attached documents indicating the positions he assumed at the UCPB and its allied companies and in the CIIF oil mills or its holding companies. These documents, however, were never marked as exhibits and offered as evidence. Even if they had been so marked and offered, however, these may not suffice to prove "close association" under the standards of the jurisprudence on this point — not every senior official of the Marcos government falls under the category of a "close associate"; proof of this type of association has to be adduced. Again, the Republic failed on this point.

10. **ID.; REPUBLIC ACT 1379; REQUISITES FOR FORFEITURE ACTION.—** [R]esort to a RA No. 1379 forfeiture action is appropriate if a subject and an object exist under the terms of this law. Specifically, there must be: (1) A **subject** or a public officer or employee, who is **any person holding any public office or employment** by virtue of an appointment, election or contract, *and* any person holding any office or employment, by appointment or contract, in any State owned or controlled

corporation or enterprise; (2) An **object** which refers to **the properties** acquired by the public officer during his incumbency **which are manifestly out of proportion to his salary** as officer and to his other lawful income and the income from legitimately acquired properties.

11. ID.; ID.; ID.; PRIOR INQUIRY SIMILAR TO A PRELIMINARY INVESTIGATION IN CRIMINAL CASES IS REQUIRED; PRIOR INQUIRY, ABSENT IN THE CASE AT BAR.— Procedurally, Section 2 of RA No. 1379, as amended, requires a prior inquiry similar to a preliminary investigation in criminal cases to be made by the Ombudsman before a forfeiture proceeding can be initiated before the Court by the Solicitor General. In the present case, no prior inquiry appeared to have been conducted. Thus, Cojuangco raised this defense in his *Answer*, together with the time bar in bringing the complaint because of its proximity to an election. **Thereafter, the Republic simply disregarded its RA No. 1379 cause of action and does not appear to have ever undertaken any corrective action to continue to address the lapses that Cojuangco noted in his *Answer*.**

12. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 1 (1986); ILL-GOTTEN WEALTH; REQUISITES FOR FORFEITURE ACTION; NOT ESTABLISHED IN THE CASE AT BAR.— EO No. 1, in relation with EO Nos. 2, 14 and 14-A, is another law that authorizes the government to recover ill-gotten wealth. A recovery action under EO No. 1 requires **(1) a subject defendant,** which refers to the former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and **close associates. (2) an object** or the ill-gotten wealth, which refers to assets and properties (in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries) belonging to the defendants. This can include business enterprises and associations owned or controlled by the defendants, during the Marcos administration, directly or through nominees; **(3) the mode of acquisition**, through which the ill-gotten wealth was acquired, directly or indirectly, (a) through or as a result of the improper or illegal use of or conversion of funds or properties owned by the Government of the

Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or *(b) by taking undue advantage of their office, authority, influence, connections or relationship.* **(4) prejudice to the government**, as the act/s of the defendant/s result in their unjust enrichment and causing grave damage to the Filipino people and the Republic of the Philippines. x x x A reading of the complaint shows that the Republic's action for recovery under EO No. 1 of the Cojuangco block of SMC shares was premised on Cojuangco's act of supposedly *taking undue advantage of official position or authority*, resulting in his unjust enrichment and grave damage and prejudice to the State. Thus, **it was crucial for the Republic to prove that, at the time the subject shares were acquired, Cojuangco occupied an official position.** While Cojuangco admitted that he (a) served as PCA Director and as President and Director of the UCPB; (b) acquired the SMC shares in 1983 and (c) used proceeds of loans and advances from UCPB and the CIIF Oil Mills, the Republic's submitted evidence and Cojuangco's admissions did not sufficiently prove that the details that EO No. 1 required, specifically, the period of Cojuangco's service as a public officer; the details of the loans and advances secured; whether and how much of these loans and advances funded the purchase of SMC shares; the details of the purchases made, when, by whom, for how much; the unjust enrichment on the part of Cojuangco and the prejudice to the government, in the manner done in *Bailey*. **All these omissions cannot but be evidentiary gaps resulting from the counsel's gross negligence that should preclude the Court from entering a judgment of forfeiture in favor of the government.**

13. **LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTIONS.—** That negligence of counsel binds the client is a strong and settled rule in jurisprudence. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. The reason for this rule is to avoid the foreseeable tendency of every losing party to raise the negligence of his or her counsel to escape an adverse decision;

experience shows that very few graciously accept a losing verdict and parties would go to great lengths and seize every opportunity to avoid a loss, although the attempt at evasion is to the detriment of justice and our justice system. It is equally settled, too, with the same strength and emphasis that once the rule on mistake or negligence of counsel deserts its proper office as an aid to justice, and on the contrary becomes a hindrance and its chief enemy, the rigors of the rule must be relaxed to admit of exceptions and thereby prevent a miscarriage of justice. In other words, the Court has the power to consider a particular case an exception to the operation of the negligence of counsel rule whenever the purposes of justice require it. What should guide judicial action as a norm is that a party should be given the fullest opportunity to establish the merits of his action or defense, rather than allow him to lose life, honor or property because of technicalities or acts or omissions that denied him of his day in court. Thus, the rule that the negligence of counsel binds the client admits of exceptions. The recognized exceptions are: (1) where reckless or gross negligence of counsel deprives the client of due process of law, (2) when its application will result in outright deprivation of the client's liberty or property or (3) where the interests of justice so require. In such cases, courts must step in and accord relief to a party-litigant.

14. **ID.; ID.; ID.; ID.; ID.; ID.; GROSS NEGLIGENCE; DEFINED; PRESENT IN THE CASE AT BAR.—** Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It is the thoughtless disregard of consequences without exerting any effort to avoid them. In this case, the omissions of Republic's counsel in handling its case has heretofore been itemized and discussed and need not be mentioned again. Suffice it to say that its failure to present evidence it had in its possession and those that it could have easily availed of, considered alone, already amounted to an abandonment or total disregard of its case. They show conscious indifference to or utter disregard of the possible adverse repercussions to the client. Such chronic inaction was present in this case when the Republic's counsel exhibited it as early as the pre-trial, at its motion for summary judgment where no less than the Sandiganbayan commented on the state of the counsel's preparation, and in the all-important

presentation of evidence stage when counsel, without much thought, marked as evidence materials that need not even be marked and offered as evidence, and thereafter refused to go to trial. These acts cannot but constitute gross negligence. x x x The uniqueness of the negligence in this case lies in the patent ineptitude that counsel for the Republic committed, as it passively allowed the government to be stripped of its interests in valuable assets claimed to be ill gotten wealth. The glaring errors of the counsel for the Republic were not minor errors in the exercise of discretion; the voluminous records of this case are replete with instances when counsel's attention was called concerning gaps in its case and its evidence, both by the Sandiganbayan and by the respondents. The Sandiganbayan even noted the apparent ignorance of the Republic's counsel regarding the case that it handled — its inability, despite the lapse of a substantial length of time, to respond to the questions of the Sandiganbayan and to identify the documents that it would present. These warnings alone should serve as a gauge to the Court of how egregious the negligence had been.

15. **CIVIL LAW; ESTOPPEL; THE STATE IS NOT ESTOPPED FROM QUESTIONING THE ACTS OF ITS OFFICIALS IF THEY ARE ERRONEOUS AND MORE SO IF THEY ARE IRREGULAR.—** [O]ur jurisprudence teaches us that the State is never estopped from questioning the acts of its officials, if they are erroneous, and more so if they are irregular. Such acts involve plain bureaucratic venality which leaves large and easily identifiable traces of neglect of duty. In *Republic v. Aquino*, we applied this principle to the failure of the government to oppose an application for land registration. In *Sharp International Marketing v. Court of Appeals*, we held that the government is not bound by a highly irregular contract entered into by a former Secretary. We also declared, in *Heirs of Reyes v. Republic*, that even if the Office of the Solicitor General failed to question a patently unconstitutional compromise agreement between the Director of Lands and Forest Development with private individuals, the government cannot be bound by it; we branded the acts of the government agent as a "blatant abandonment of their [duties]" and a display of their "gross incompetence."

16. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS CLAUSE; REQUIREMENT OF**

DUE PROCESS, WHEN SATISFIED.— The requirements of due process are satisfied if the following conditions are present: (1) there is a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction is lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (3) the defendant is given an opportunity to be heard; and (4) judgment is rendered upon a lawful hearing. Substantively, what underlies due process is the rule of reason; it is a rule against arbitrariness and injustice measured under the standards of reason. Procedurally, the fundamental requirement of due process involves the opportunity to be heard at a meaningful time and in a meaningful manner. Whether in the substantive or in the procedural signification, due process must comport with the deepest notions of what is fair and right and just.

17. ID.; ID.; ID.; ID.; RIGHT TO DUE PROCESS; REMAND OF THE CASE FOR A FULL-BLOWN TRIAL ON THE MERITS, PROPER.— On a superficial consideration, the proceedings before the Sandiganbayan appear to have complied with all that due process demands in a judicial proceeding. The Sandiganbayan granted the government the opportunity to be heard and was not remiss in reminding the Republic's counsel of its view of the status of the government's case. That counsel chose to formally offer as evidence documents that were already on record or subject to judicial notice, and that it miserably failed to support its stated claims, do not appear to be a violation of the requirements of procedural due process. However, ***the right to due process in our legal system does not merely rely on technical and pedantic application of procedural formalities; it involves as well the consideration of the substance of the affected underlying rights whose denial under unreasonable circumstances is equivalent to the loss of day in court that is entitled to redress and correction to afford justice to all.*** **The denial, as it transpired in this case, is unique but is not any less a basic and inherent unfairness.** The Court is now faced with a situation where the conclusions of the Sandiganbayan are valid, *based on the evidence formally offered,* but are contradicted by existing evidence that counsel chose not to offer and evidence that, by omission, it chose not to explore. x x x The Court stands to participate in this unfairness and injustice if it stands idly and

let the government be deprived of valuable assets, or the chance to prove its interest in these assets, knowing fully well the gross incompetence and negligence of its counsel that brought on the injustice. If the Court is convinced that gross injustice transpired brought on by the failure on the part of the Republic to present its case due to the gross negligence of its counsel, an outright dismissal of the present petition would not comply with the due process requirements enshrined in our Constitution. Let it be noted that the Republic's case is not totally without merit. Records are replete with indications that a meritorious case can be made out for the recovery sought if only the Republic can have its day in court. ***Under these circumstances, the Court's remedy can be no less than a continuation of the proceedings of this case through its remand of the case for a full-blown trial on the merits in proceedings that accord the government a real chance to present all of its evidence.*** To be sure, the Court is not wanting in authority to impose this remedy; it is a well-established and accepted doctrine that rules of procedure may be modified at any time to become effective at once, so long as the change does not affect vested rights. In short, this Court can adapt the rules of procedure, as its response to the duty and obligation to act in the higher interests of justice.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Estelito P. Mendoza, Lorenzo G. Timbol and *Eirene Jhone E. Aguila* for Eduardo Cojuangco, Jr.

Angara Abello Concepcion Regala & Cruz and *Valmores & Valmores Law offices* for COCOFED, *et al.*

Ubano Ancheta Sianghio & Lozada for Heirs of M.C. Lobregat.

Catapang Tiongco Torres & Martin and *Sayuno Mendoza & San Jose Law Offices* for CIIF Companies & 14 Holdings Companies.

Diño Borja Sarabia Factoran & Tadena Law Offices for Danilo S. Ursua.

Ponce Enrile Reyes & Manalastas for Juan Ponce Enrile.

Wigberto E. Tañada for petitioner-intervenor.

Jose A. Suing for movants-heirs of the Deceased Dionisia, Nicolas, Cornelio, Maria, Aniceta & Antonia, all surnamed Bansil.

Efren Moncopa for petitioners-intervenors.

D E C I S I O N

BERSAMIN, *J.*:

For over two decades, the issue of whether the sequestered sizable block of shares representing 20% of the outstanding capital stock of San Miguel Corporation (SMC) at the time of acquisition belonged to their registered owners or to the coconut farmers has remained unresolved. Through this decision, the Court aims to finally resolve the issue and terminate the uncertainty that has plagued that sizable block of shares since then.

These consolidated cases were initiated on various dates by the Republic of the Philippines (Republic) *via* petitions for *certiorari* in G.R. Nos. 166859[1] and 169023,[2] and *via* petition for review on *certiorari* in 180702,[3] the first two petitions being brought to assail the following resolutions issued in Civil Case No. 0033-F by the Sandiganbayan, and the third being brought to appeal the adverse decision promulgated on November 28, 2007 in Civil Case No. 0033-F by the Sandiganbayan.

Specifically, the petitions and their particular reliefs are as follows:

(a) G.R. No. 166859 (petition for *certiorari*), to assail the resolution promulgated on December 10, 2004[4] denying the Republic's *Motion For Partial Summary Judgment*;

(b) G.R. No. 169023 (petition for *certiorari*), to nullify and set aside, *firstly*, the resolution promulgated on October 8,

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[1] *Rollo* (G.R. No. 166859), pp. 2-48.

[2] *Rollo* (G.R. No. 169023), pp. 2-39.

[3] *Rollo* (G.R. No. 180702), Vol. 2, pp. 397-459.

[4] *Rollo* (G.R. No. 166859), pp. 49-63.

2003,[5] and, *secondly*, the resolution promulgated on June 24, 2005[6] modifying the resolution of October 8, 2003; and

(c) G.R. No. 180702 (petition for review on *certiorari*), to appeal the decision promulgated on November 28, 2007.[7]

ANTECEDENTS

On July 31, 1987, the Republic commenced Civil Case No. 0033 in the Sandiganbayan by complaint, impleading as defendants respondent Eduardo M. Cojuangco, Jr. (Cojuangco) and 59 individual defendants. On October 2, 1987, the Republic amended the complaint in Civil Case No. 0033 to include two additional individual defendants. On December 8, 1987, the Republic further amended the complaint through its *Amended Complaint [Expanded per Court-Approved Plaintiff's 'Manifestation/Motion Dated Dec. 8, 1987]* albeit dated October 2, 1987.

More than three years later, on August 23, 1991, the Republic once more amended the complaint apparently to avert the nullification of the writs of sequestration issued against properties of Cojuangco. The amended complaint dated August 19, 1991, designated as *Third Amended Complaint [Expanded Per Court-Approved Plaintiff's Manifestation/Motion Dated Dec. 8, 1987]*,[8] impleaded in addition to Cojuangco, President Marcos, and First Lady Imelda R. Marcos nine other individuals, namely: Edgardo J. Angara, Jose C. Concepcion, Avelino V. Cruz, Eduardo U. Escueta, Paraja G. Hayudini, Juan Ponce Enrile, Teodoro D. Regala, and Rogelio Vinluan, collectively, the ACCRA lawyers, and Danilo Ursua, and 71 corporations.

On March 24, 1999, the Sandiganbayan allowed the subdivision of the complaint in Civil Case No. 0033 into eight

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[5] *Rollo* (G.R. No. 169023), pp. 40-55.

[6] *Id.,* pp. 74-82.

[7] *Rollo* (G.R. No. 180702), Vol. 2, pp. 461-514.

[8] *Id.,* pp. 516-590.

complaints, each pertaining to distinct transactions and properties and impleading as defendants only the parties alleged to have participated in the relevant transactions or to have owned the specific properties involved. The subdivision resulted into the following subdivided complaints, to wit:

	Subdivided Complaint	Subject Matter
1.	Civil Case No. 0033-A	Anomalous Purchase and Use of First United Bank (now United Coconut Planters Bank)
2.	Civil Case No. 0033-B	Creation of Companies Out of Coco Levy Funds
3.	Civil Case No. 0033-C	Creation and Operation of Bugsuk Project and Award of ₱998 Million Damages to Agricultural Investors, Inc.
4.	Civil Case No. 0033-D	Disadvantageous Purchases and Settlement of the Accounts of Oil Mills Out of Coco Levy Funds
5.	Civil Case No. 0033-E	Unlawful Disbursement and Dissipation of Coco Levy Funds
6.	Civil Case No. 0033-F	Acquisition of SMC shares of stock
7.	Civil Case No. 0033-G	Acquisition of Pepsi-Cola
8.	Civil Case No. 0033-H	Behest Loans and Contracts

In Civil Case No. 0033-F, the individual defendants were Cojuangco, President Marcos and First Lady Imelda R. Marcos, the ACCRA lawyers, and Ursua. Impleaded as corporate defendants were Southern Luzon Oil Mills, Cagayan de Oro Oil Company, Incorporated, Iligan Coconut Industries, Incorporated, San Pablo Manufacturing Corporation, Granexport Manufacturing Corporation, Legaspi Oil Company, Incorporated, collectively referred to herein as the CIIF Oil Mills, and their 14 holding companies, namely: Soriano Shares, Incorporated, Roxas Shares, Incorporated, Arc Investments, Incorporated, Toda Holdings, Incorporated, ASC Investments, Incorporated, Randy Allied Ventures, Incorporated, AP Holdings, Incorporated, San Miguel Corporation Officers, Incorporated, Te Deum

Resources, Incorporated, Anglo Ventures, Incorporated, Rock Steel Resources, Incorporated, Valhalla Properties, Incorporated, and First Meridian Development, Incorporated.

Allegedly, Cojuangco purchased a block of 33,000,000 shares of SMC stock through the 14 holding companies owned by the CIIF Oil Mills. For this reason, the block of 33,133,266 shares of SMC stock shall be referred to as the CIIF block of shares.

Also impleaded as defendants in Civil Case No. 0033-F were several corporations[9] alleged to have been under Cojuangco's control and used by him to acquire the block of shares of SMC stock totaling 16,276,879 at the time of acquisition (representing approximately 20% percent of the capital stock of SMC). These corporations are referred to as Cojuangco corporations or companies, to distinguish them from the CIIF Oil Mills. Reference hereafter to Cojuangco and the Cojuangco corporations or

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[9] Namely: Agricultural Consultancy Services, Incorporated, Archipelago Realty Corporation, Autonomous Development Corporation, Balete Ranch, Incorporated, Black Stallion Ranch, Incorporated, Christensen Plantation Company, Cocoa Investors, Incorporated, Davao Agicultural Aviation, Incorporated, Discovery Realty Corporation, Dream Pastures, Incorporated, Echo Ranch, Incorporated, ECJ & Sons Agri. Ent., Incorporated, Far East Ranch, Incorporated, FILSOV Shipping Company, Incorporated, First United Transport, Incorporated, Habagat Realty Development, Incorporated, HYCO Agricultural, Incorporated, Kalawakan Resorts, Incorporated, Kaunlaran Agricultural Corporation, Labayog Air Terminals, Incorporated, Landair International Marketing Corporation, LHL Cattle Corporation, Meadow Lark Plantations, Incorporated, Metroplex Commodities, Incorporated, Misty Mountain Agricultural Corporation, Northeast Contract Traders, Incorporated, Northern Carriers Corporation, Oceanside Maritime Enterprises, Incorporated, Oro Verde Services, Incorporated, Pastoral Farms, Incorporated, PCY Oil Manufacturing Corporation, Philippine Radio Corporation, Incorporated, Philippine Technologies, Incorporated, Primavera Farms, Incorporated, Punong-Bayan Housing Development Corporation, Pura Electric Company, Incorporated, Radio Audience Developers Integrated Organization, Incorporated, Radio Pilipino Corporation, Rancho Grande, Incorporated, Reddee Developers, Incorporated, San Esteban Development Corporation, Silver Leaf Plantation, Incorporated, Southern Services Traders, Incorporated, Southern Star Cattle Corporation, Spade 1 Resorts Corporation, Tagum Agricultural Development Corporation, Thilagro Edible Oil Mills, Incorporated, Unexplored Land Developers, Incorporated, Ventures Securities, Incorporated, Verdant Plantations, Inc., Vesta Agricultural Corporation, and Wings Resorts Corporation.

companies shall be as Cojuangco, *et al*., unless the context requires individualization.

The material averments of the Republic's *Third Amended Complaint* (*Subdivided*)[10] in Civil Case No. 0033-F included the following:

12. Defendant Eduardo Cojuangco, Jr., served as a public officer during the Marcos administration. During the period of his incumbency as a public officer, he acquired assets, funds, and other property grossly and manifestly disproportionate to his salaries, lawful income and income from legitimately acquired property.

13. Having fully established himself as the undisputed "coconut king" with unlimited powers to deal with the coconut levy funds, the stage was now set for Defendant Eduardo M. Cojuangco, Jr. to launch his predatory forays into almost all aspects of Philippine economic activity namely: softdrinks, agribusiness, oil mills, shipping, cement manufacturing, textile, as more fully described below.

14. Defendant Eduardo Cojuangco, Jr. taking undue advantage of his association, influence and connection, acting in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and the individual defendants, embarked upon devices, schemes and stratagems, including the use of defendant corporations as fronts, to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, such as when he misused coconut levy funds to buy out majority of the outstanding shares of stock of San Miguel Corporation in order to control the largest agri-business, foods and beverage company in the Philippines, more particularly described as follows:

(a) Having control over the coconut levy, Defendant Eduardo M. Cojuangco invested the funds in diverse activities, such as the various businesses SMC was engaged in (*e.g.* large beer, food, packaging, and livestock);

(b) He entered SMC in early 1983 when he bought most of the 20 million shares Enrique Zobel owned in the Company. The shares, worth $49 million, represented 20% of SMC;

(c) Later that year, Cojuangco also acquired the Soriano stocks through a series of complicated and secret agreements, a key

[10] *Rollo* (G.R. No. 180702), Vol. 2, pp. 516-545.

feature of which was a "voting trust agreement" that stipulated that Andres, Jr. or his heir would proxy over the vote of the shares owned by Soriano and Cojuangco. This agreement, which accounted for 30% of the outstanding shares of SMC and which lasted for five (5) years, enabled the Sorianos to retain management control of SMC for the same period;

(d) Furthermore, in exchange for an SMC investment of $45 million in non-voting preferred shares in UCPB, Soriano served as the vice-chairman of the supposed bank of the coconut farmers, UCPB, and in return, Cojuangco, for investing funds from the coconut levy, was named vice-chairman of SMC;

(e) Consequently, Cojuangco enjoyed the privilege of appointing his nominees to the SMC Board, to which he appointed key members of the ACCRA Law Firm (herein Defendants) instead of coconut farmers whose money really funded the sale;

(f) The scheme of Cojuangco to use the lawyers of the said Firm was revealed in a document which he signed on 19 February 1983 entitled "Principles and Framework of Mutual Cooperation and Assistance" which governed the rules for the conduct of management of SMC and the disposition of the shares which he bought.

(g) All together, Cojuangco purchased 33 million shares of the SMC through the following 14 holding companies:

Company	Shares
a) Soriano Shares, Inc.	1,249,163
b) ASC Investors, Inc.	1,562,449
c) Roxas Shares, Inc.	2,190,860
d) ARC Investors, Inc.	4,431,798
e) Toda Holdings, Inc.	3,424,618
f) AP Holdings, Inc.	1,580,997
g) Fernandez Holdings, Inc.	838,837
h) SMC Officers Corps., Inc.	2,385,987
i) Te Deum Resources, Inc.	2,674,899
j) Anglo Ventures Corp.	1,000,000
k) Randy Allied Ventures, Inc.	1,000,000
l) Rock Steel Resources, Inc.	2,432,625
m) Valhalla Properties Ltd., Inc.	1,361,033
n) First Meridian Development, Inc.	1,000,000
	33,133,266

3.1. The same fourteen companies were in turn owned by the following six (6) so-called CIIF Companies which were:

a) San Pablo Manufacturing Corp.	19%
b) Southern Luzon Coconut Oil Mills, Inc.	11%
c) Granexport Manufacturing Corporation	19%
d) Legaspi Oil Company, Inc.	18%
e) Cagayan de Oro Oil Company, Inc.	18%
f) Iligan Coconut Industries, Inc.	15%
	100%

(h) Defendant Corporations are but "shell" corporations owned by interlocking shareholders who have previously admitted that they are just "nominee stockholders" who do not have any proprietary interest over the shares in their names. The respective affidavits of the following, namely: Jose C. Concepcion, Florentino M. Herrera III, Teresita J. Herbosa, Teodoro D. Regala, Victoria C. de los Reyes, Manuel R. Roxas, Rogelio A. Vinluan, Eduardo U. Escueta and Franklin M. Drilon, who were all, at the time they became such stockholders, lawyers of the Angara Abello Concepcion Regala & Cruz (ACCRA) Law Offices, the previous counsel who incorporated said corporations, prove that they were merely nominee stockholders thereof.

(i) Mr. Eduardo M. Cojuangco, Jr., acquired a total of 16,276,879 shares of San Miguel Corporation from the Ayala group: of said shares, a total of 8,138,440 (broken into 7,128,227 Class A and 1,010,213 Class B shares) were placed in the names of Meadowlark Plantations, Inc. (2,034,610) and Primavera Farms, Inc. (4,069,220). The Articles of Incorporation of these three companies show that Atty. Jose C. Concepcion of ACCRA owns 99.6% of the entire outstanding stock. The same shareholder executed three (3) separate "Declaration of Trust and Assignment of Subscription": in favor of a BLANK assignee pertaining to his shareholdings in Primavera Farms, Inc., Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc.

(k) The other respondent Corporations are owned by interlocking shareholders who are likewise lawyers in the ACCRA Law Offices and had admitted their status as "nominee stockholders" only.

> (k-1) The corporations: Agricultural Consultancy Services, Inc., Archipelago Realty Corporation, Balete

Ranch, Inc., Black Stallion Ranch, Inc., Discovery Realty Corporation, First United Transport, Inc., Kaunlaran Agricultural Corporation, LandAir International Marketing Corporation, Misty Mountains Agricultural Corporation, Pastoral Farms, Inc., Oro Verde Services, Inc. Radyo Filipino Corporation, Reddee Developers, Inc., Verdant Plantations, Inc. and Vesta Agricultural Corporation, were incorporated by lawyers of ACCRA Law Offices.

(k-2) With respect to PCY Oil Manufacturing Corporation and Metroplex Commodities, Inc., they are controlled respectively by HYCO, Inc. and Ventures Securities, Inc., both of which were incorporated likewise by lawyers of ACCRA Law Offices.

(k-3) The stockholders who appear as incorporators in most of the other Respondents corporations are also lawyers of the ACCRA Law Offices, who as early as 1987 had admitted under oath that they were acting only as "nominee stockholders."

(l) These companies, which ACCRA Law Offices organized for Defendant Cojuangco to be able to control more than 60% of SMC shares, were funded by institutions which depended upon the coconut levy such as the UCPB, UNICOM, United Coconut Planters Assurance Corp. (COCOLIFE), among others. Cojuangco and his ACCRA lawyers used the funds from 6 large coconut oil mills and 10 copra trading companies to borrow money from the UCPB and purchase these holding companies and the SMC stocks. Cojuangco used $150 million from the coconut levy, broken down as follows:

Amount (in million)	Source	Purpose
$22.26	Oil Mills	equity in holding companies
$65.6	Oil Mills	loan to holding companies
$61.2	UCPB	loan to holding companies [164]

The entire amount, therefore, came from the coconut levy, some passing through the Unicom Oil mills, others directly from the UCPB.

(m) With his entry into the said Company, it began to get favors from the Marcos government, significantly the lowering of the excise taxes (sales and specific taxes) on beer, one of the main products of SMC.

(n) Defendant Cojuangco controlled SMC from 1983 until his co-defendant Marcos was deposed in 1986.

(o) Along with Cojuangco, Defendant Enrile and ACCRA also had interests in SMC, broken down as follows:

% of SMC	Owner
Cojuangco	
31.3%	coconut levy money
18%	companies linked to Cojuangco
5.2%	government
5.2%	SMC employee retirement fund
Enrile & ACCRA	
1.8%	Enrile
1.8%	Jaka Investment Corporation
1.8%	ACCRA Investment Corporation

15. Defendants Eduardo Cojuangco, Jr., Edgardo J. Angara, Jose C. Concepcion, Teodoro Regala, Avelino Cruz, Rogelio Vinluan, Eduardo U. Escueta and Paraja G. Hayudini of the Angara Concepcion Cruz Regala and Abello law offices (ACCRA) plotted, devised, schemed, conspired and confederated with each other in setting up, through the use of coconut levy funds, the financial and corporate framework and structures that led to the establishment of UCPB, UNICOM, COCOLIFE, COCOMARK. CIC, and more than twenty other coconut levy-funded corporations, including the acquisition of San Miguel Corporation shares and its institutionalization through presidential directives of the coconut monopoly. Through insidious means and machinations, ACCRA, being the wholly-owned investment arm, ACCRA Investments Corporation, became the holder of approximately fifteen million shares representing roughly 3.3% of the total outstanding capital stock of UCPB as of 31 March 1987. This ranks ACCRA Investments Corporation number 44 among the top 100 biggest stockholders of UCPB which has approximately

1,400,000 shareholders. On the other hand, the corporate books show the name Edgardo J. Angara as holding approximately 3,744 shares as of February, 1984.

16. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, violation of the constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people.[11]

On June 17, 1999, Ursua and Enrile each filed his separate *Answer with Compulsory Counterclaims*.

Before filing their answer, the ACCRA lawyers sought their exclusion as defendants in Civil Case No. 0033, averring that even as they admitted having assisted in the organization and acquisition of the companies included in Civil Case No. 0033, they had acted as mere nominees-stockholders of corporations involved in the sequestration proceedings pursuant to office practice. After the Sandiganbayan denied their motion, they elevated their cause to this Court, which ultimately ruled in their favor in the related cases of *Regala, et al. v. Sandiganbayan, et al.*[12] and *Hayudini v. Sandiganbayan, et al.,*[13] as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, the Resolutions of respondent Sandiganbayan (First Division) promulgated on March 18, 1992 and May 21, 1992 are hereby ANNULLED and SET ASIDE. Respondent Sandiganbayan is further ordered to exclude petitioners Teodoro D. Regala, Edgardo J. Angara, Avelino V. Cruz, Jose C. Concepcion, Victor P. Lazatin, Eduardo U. Escueta and Paraja G. Hayudini as parties-defendants in SB Civil Case No. 0033 entitled "*Republic of the Philippines v. Eduardo Cojuangco, Jr., et al*."

SO ORDERED.

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[11] *Id.,* pp. 525-533.

[12] G.R. No. 105938, September 20, 1996, 262 SCRA 122.

[13] *Ibid.*

Conformably with the ruling, the Sandiganbayan excluded the ACCRA lawyers from the case on May 24, 2000.[14]

On June 23, 1999, Cojuangco filed his *Answer to the Third Amended Complaint*,[15] averring the following affirmative defenses, to wit:

> 7.00. The Presidential Commission on Good Government (PCGG) is without authority to act in the name and in behalf of the "Republic of the Philippines."
>
> 7.01. As constituted in E.O. No. 1, the PCGG was composed of "Minister Jovito R. Salonga, as Chairman, Mr. Ramon Diaz, Mr. Pedro L. Yap, Mr. Raul Daza and Ms. Mary Concepcion Bautista, as Commissioners." When the complaint in the instant case was filed, Minister Salonga, Mr. Pedro L. Yap and Mr. Raul Daza had already left the PCGG. By then the PCGG had become *functus officio*.
>
> 7.02. The Sandiganbayan has no jurisdiction over the complaint or over the transaction alleged in the complaint.
>
> 7.03. The complaint does not allege any cause of action.
>
> 7.04. The complaint is not brought in the name of the real parties in interest, assuming any cause of action exists.
>
> 7.05. Indispensable and necessary parties have not been impleaded.
>
> 7.06. There is improper joinder of causes of action (Sec. 6, Rule 2, Rules of Civil Procedure). The causes of action alleged, if any, do not arise out of the same contract, transaction or relation between the parties, nor are they simply for money, or are of the same nature and character.
>
> 7.07. There is improper joinder of parties defendants (Sec. 11, Rule 3, Rules of Civil Procedure).The causes of action alleged as to defendants, if any, do not involve a single transaction or a related series of transactions. Defendant is thus compelled to

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[14] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 478.

[15] *Rollo,* (G.R. 180702), Vol. 2, pp. 591-610.

litigate in a suit regarding matters as to which he has no involvement. The questions of fact and law involved are not common to all defendants.

7.08. In so far as the complaint seeks the forfeiture of assets allegedly acquired by defendant "manifestly out of proportion to their salaries, to their other lawful income and income from legitimately acquired property," under R.A. 1379, the "previous inquiry similar to preliminary investigation in criminal cases" required to be conducted under Sec. 2 of that law before any suit for forfeiture may be instituted, was not conducted; as a consequence, the Court may not acquire and exercise jurisdiction over such a suit.

7.09. The complaint in the instant suit was filed July 31, 1987, or within one year before the local election held on January 18, 1988. If this suit involves an action under R.A. 1379, its institution was also in direct violation of Sec. 2, R.A. No. 1379.

7.10. E.O. No. 1, E.O. No. 2, E.O. No. 14 and 14-A, are unconstitutional. They violate due process, equal protection, *ex post facto* and bill of attainder provisions of the Constitution.

7.11. Acts imputed to defendant which he had committed were done pursuant to law and in good faith.

The Cojuangco corporations' *Answer*[16] had the same tenor as the *Answer* of Cojuangco.

In his own *Answer with Compulsory Counterclaims*,[17] Ursua averred affirmative and special defenses.

In his own *Answer with Compulsory Counterclaims*,[18] Enrile specifically denied the material averments of the *Third Amended Complaint* and asserted affirmative defenses.

The CIIF Oil Mills' *Answer*[19] also contained affirmative defenses.

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[16] *Id.*, pp. 611-625.

[17] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, pp. 471-473.

[18] *Id.*, pp. 473-476.

[19] *Id.*, pp. 476-477.

On December 20, 1999, the Sandiganbayan scheduled the pre-trial in Civil Case No. 0033-F on March 8, 2000, giving the parties sufficient time to file their Pre-Trial Briefs prior to that date. Subsequently, the parties filed their respective Pre-Trial Briefs, as follows: Cojuangco and the Cojuangco corporations, jointly on February 14, 2000; Enrile, on March 1, 2000; the CIIF Oil Mills, on March 3, 2000; and Ursua, on March 6, 2000. However, the Republic sought several extensions to file its own Pre-Trial Brief, and eventually did so on May 9, 2000.

In the meanwhile, some non-parties sought to intervene. On November 22, 1999, GABAY Foundation, Inc. (GABAY) filed its complaint-in-intervention. On February 24, 2000, the Philippine Coconut Producers Federation, Inc., Maria Clara L. Lobregat, Jose R. Eleazar, Jr., Domingo Espina, Jose Gomez, Celestino Sabate, Manuel del Rosario, Jose Martinez, Jr., and Eladio Chato (collectively referred to as COCOFED, considering that the co-intervenors were its officers) also sought to intervene, citing the October 2, 1989 ruling in G.R. No. 75713 entitled *COCOFED v. PCGG* whereby the Court recognized COCOFED as the "private national association of coconut producers certified in 1971 by the PHILCOA as having the largest membership among such producers" and as such "entrusted it with the task of maintaining continuing liaison with the different sectors of the industry, the government and its mass base." Pending resolution of its motion for intervention, COCOFED filed a Pre-Trial Brief on March 2, 2000.

On May 24, 2000, the Sandiganbayan denied GABAY's intervention without prejudice because it found "that the allowance of GABAY to enter under the special character in which it presents itself would be to open the doors to other groups of coconut farmers whether of the same kind or of any other kind which could be considered a sub-class or a sub-classification of the coconut planters or the coconut industry of this country."[20]

COCOFED's intervention as defendant was allowed on May 24, 2000, however, because "the position taken by the

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[20] *Id.*, p. 479.

COCOFED is relevant to the proceedings herein, if only to state that there is a special function which the COCOFED and the coconut planters have in the matter of the coconut levy funds and the utilization of those funds, part of which is in dispute in the instant matter."[21]

The pre-trial was actually held on May 24, 2000,[22] during which the Sandiganbayan sought clarification from the parties, particularly the Republic, on their respective positions, but at the end it found the clarifications "inadequately" enlightening. Nonetheless, the Sandiganbayan, not disposed to reset, terminated the pre-trial:

xxx primarily because the Court is given a very clear impression that the plaintiff does not know what documents will be or whether they are even available to prove the causes of action in the complaint. The Court has pursued and has exerted every form of inquiry to see if there is a way by which the plaintiff could explain in any significant particularity the acts and the evidence which will support its claim of wrong-doing by the defendants. The plaintiff has failed to do so.[23]

The following material portions of the pre-trial order[24] are quoted to provide a proper perspective of what transpired during the pre-trial, to wit:

Upon oral inquiry from the Court, the issues which were being raised by plaintiff appear to have been made on a very generic character. Considering that any claim for violation or breach of trust or deception cannot be made on generic statements but rather by specific acts which would demonstrate fraud or breach of trust or deception, together with the evidence in support thereof, the same was not acceptable to the Court.

The plaintiff through its designated counsel for this morning, Atty. Dennis Taningco, has represented to this Court that the annexes to

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[21] *Id.*

[22] *Id.*, p. 480.

[23] *Id.*, p. 481.

[24] *Rollo* (G.R. No. 169203), pp. 320-323-A.

its pre-trial brief, more particularly the findings of the COA in its various examinations, copies of which COA reports are attached to the pre-trial brief, would demonstrate the wrong, the act or omission attributed to the defendants or to several of them and the basis, therefore, for the relief that plaintiff seeks in its complaint. It would appear, however, that the plaintiff through its counsel at this time is not prepared to go into the specifics of the identification of these wrongs or omissions attributed to plaintiff.

The Court has reminded the plaintiff that a COA report proves itself only in proceedings where the issue arises from a review of the accountability of particular officers and, therefore, to show the existence of shortages or deficiencies in an examination conducted for that purpose, provided that such a report is accompanied by its own working papers and other supporting documents.

In civil cases such as this, a COA report would not have the same independent probative value since it is not a review of the accountability of public officers for public property in their custody as accountable officers. It has been the stated view of this Court that a COA report, to be of significant evidence, may itself stand only on the basis of the supporting documents that upon which it is based and upon an analysis made by those who are competent to do so. The Court, therefore, sought a more specific statement from plaintiff as to what these documents were and which of them would prove a particular act or omission or a series of acts or omissions purportedly committed by any, by several or by all of the defendants in any particular stage of the chain of alleged wrong-doing in this case.

The plaintiff was not in a position to do so.

The Court has remonstrated with the plaintiff, insofar as its inadequacy is concerned, primarily because this case was set for pre-trial as far back as December and has been reset from its original setting, with the undertaking by the plaintiff to prepare itself for these proceedings. It appears to this Court at this time that the failure of the plaintiff to have available responses and specific data and documents at this stage is not because the matter has been the product of oversight or notes and papers left elsewhere; rather, the agitation of this Court arises from the fact that at this very stage, the plaintiff through its counsel does not know what these documents are, where these documents will be and is still anticipating a

submission or a delivery thereof by COA at an undetermined time. The justification made by counsel for this stance is that this is only pre-trial and this information and the documents are not needed yet.

The Court is not prepared to postpone the pre-trial anew primarily because the Court is given a very clear impression that the plaintiff does not know what documents will be or whether they are even available to prove the causes of action in the complaint. The Court has pursued and has exerted every form of inquiry to see if there is a way by which the plaintiff could explain in any significant particularity the acts and the evidence which will support its claim of wrong-doing by the defendants. The plaintiff has failed to do so.

Defendants Cojuangco have come back and reiterated their previous inquiry as to the statement of the cause of action and the description thereof. While the Court acknowledges that logically, that statement along that line would be primary, the Court also recognizes that sometimes the phrasing of the issue may be determined or may arise after a statement of the evidence is determined by this Court because the Court can put itself in a position of more clearly and perhaps more accurately stating what the issues are. The Pre-Trial Order, after all, is not so much a reflection of merely separate submissions by all of the parties involved, witnesses by the Court, as to what the subject matter of litigation will be, including the determination of what matters of fact remain unresolved. At this time, the plaintiff has not taken the position on any factual statement or any piece of evidence which can be subject of admission or denial, nor any specifics of any act which could be disputed by the defendants; what plaintiff through counsel has stated are general conclusions, general statements of abuse and misuse and opportunism.

After an extended break requested by some of the parties, the sessions were resumed and nothing anew arose from the plaintiff. The plaintiff sought fifteen (15) days to file a reply to the comments and observations made by defendant Cojuangco to the pre-trial brief of the plaintiff. This Court denied this Request since the submissions in preparation for pre-trial are not litigious or contentious matters. They are mere assertions or positions which may or may not be meritorious depending upon the view of the Court of the entire case and if useful at the pre-trial. At this stage, the plaintiff then reiterated its earlier request to consider the pre-trial terminated. The Court sought the positions of the other parties, whether or not they too were prepared to submit their respective positions on the basis of what was before the Court at pre-trial. All of the parties, in the end,

have come to an agreement that they were submitting their own respective positions for purpose of pre-trial on the basis of the submissions made of record.

With all of the above, the pre-trial is now deemed terminated.

This Order has been overly extended simply because there has been a need to put on record all of the events that have taken place leading to the conclusions which were drawn herein.

The parties have indicated a desire to make their submissions outside of trial as a consequence of this terminated pre-trial, with the plea that the transcript of the proceedings this morning be made available to them, so that they may have the basis for whatever assertions they will have to make either before this Court or elsewhere. The Court deems the same reasonable and the Court now gives the parties fifteen (15) days after notice to them that the transcript of stenographic notes of the proceedings herein are complete and ready for them to be retrieved. Settings for trial or for any other proceeding hereafter will be fixed by this Court either upon request of the parties or when the Court itself shall have determined that nothing else has to be done.

The Court has sought confirmation from the parties present as to the accuracy of the recapitulation herein of the proceedings this morning and the Court has gotten assent from all of the parties.

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SO ORDERED.[25]

In the meanwhile, the Sandiganbayan, in order to conform with the ruling in *Presidential Commission on Good Government v. Cojuangco, et al.*,[26] resolved COCOFED's *Omnibus Motion* (with prayer for preliminary injunction) relative to who should vote the UCPB shares under sequestration, holding as follows:[27]

In the light of all of the above, the Court submits itself to jurisprudence and with the statements of the Supreme Court in G.R.

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[25] *Id.*

[26] G.R. No. 133197, January 27, 1999, 302 SCRA 217.

[27] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, pp. 483-484.

No. 115352 entitled *Enrique Cojuangco, Jr., et al. vs. Jaime Calpo, et al.* dated January 27, 1997, as well as the resolution of the Supreme Court promulgated on January 27, 1999 in the case of *PCGG vs. Eduardo Cojuangco, Jr., et al.,* G.R. No. 13319 which included the Sandiganbayan as one of the respondents. In these two cases, the Supreme Court ruled that the voting of sequestered shares of stock is governed by two considerations, namely:

1. whether there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State; and

2. whether there is an imminent danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the Sandiganbayan.

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In view hereof, the movants COCOFED, *et al*. and Ballares, *et al*. as well as Eduardo Cojuangco, *et al*. who were acknowledged to be registered stockholders of the UCPB are authorized, as are all other registered stockholders of the United Coconut Planters Bank, until further orders from this Court, to exercise their rights to vote their shares of stock and themselves to be voted upon in the United Coconut Planters Bank (UCPB) at the scheduled Stockholders' Meeting on March 6, 2001 or on any subsequent continuation or resetting thereof, and to perform such acts as will normally follow in the exercise of these rights as registered stockholders.

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Consequently, on March 1, 2001, the Sandiganbayan issued a writ of preliminary injunction to enjoin the PCGG from voting the sequestered shares of stock of the UCPB.

On July 25, 2002, before Civil Case No. 0033-F could be set for trial, the Republic filed a *Motion for Judgment on the Pleadings and/or for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and COCOFED, et al.).*[28]

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[28] *Id.*, p. 484.

Cojuangco, Enrile, and COCOFED separately opposed the motion. Ursua adopted COCOFED's opposition.

Thereafter, the Republic likewise filed a *Motion for Partial Summary Judgment [Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies].*[29]

Cojuangco, *et al.* opposed the motion,[30] after which the Republic submitted its reply.[31]

On February 23, 2004, the Sandiganbayan issued an order,[32] in which it enumerated the admitted facts or facts that appeared to be without substantial controversy in relation to the Republic's *Motion for Judgment on the Pleadings and/or for Partial Summary Judgment [Re: Defendants CIIF Companies, 14 Holding Companies and COCOFED, et al.].*

Commenting on the order of February 23, 2004, Cojuangco, *et al.* specified the items they considered as inaccurate, but particularly interposed no objection to item no. 17 (to the extent that item no. 17 stated that Cojuangco had disclaimed any interest in the CIIF block SMC shares of stock registered in the names of the 14 corporations listed in item no. 1 of the order).[33]

The Republic also filed its *Comment*,[34] but COCOFED denied the admitted facts summarized in the order of February 23, 2004.[35]

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[29] *Rollo* (G.R. No. 180702), Vol. 2, pp. 642-684.

[30] *Id.*, pp. 685-738.

[31] *Id.*, pp. 738A-807.

[32] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 485.

[33] *Id.*, p. 485.

[34] *Id.*

[35] *Id.*

Earlier, on October 8, 2003,[36] the Sandiganbayan resolved the various pending motions and pleadings relative to the writs of sequestration issued against the defendants, disposing:

IN VIEW OF THE FOREGOING, the Writs of Sequestration Nos. (a) 86-0042 issued on April 8, 1986, (b) 86-0062 issued on April 21, 1986, (c) 86-0069 issued on April 22, 1986, (d) 86-0085 issued on May 9, 1986, (e) 86-0095 issued on May 16, 1986, (f) 86-0096 dated May 16, 1986, (g) 86-0097 issued on May 16, 1986, (h) 86-0098 issued on May 16, 1986 and (i) 87-0218 issued on May 27, 1987 are hereby declared automatically lifted for being null and void.

Despite the lifting of the writs of sequestration, since the Republic continues to hold a claim on the shares which is yet to be resolved, it is hereby ordered that the following shall be annotated in the relevant corporate books of San Miguel Corporation:

(1) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case;

(2) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares;

(3) in the event of sale, mortgage or other disposition of the shares, by the Defendants Cojuangco, *et al*., the consideration therefore, whether in cash or in kind, shall be placed in escrow with Land Bank of the Philippines, subject to disposition only upon further orders of this Court; and

(4) any cash dividends that are declared on the shares shall be placed in escrow with the Land Bank of the Philippines,

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[36] *Rollo* (G.R. No. 169203), pp. 40-55; the resolution, although dated September 17, 2003, was promulgated only on October 8, 2003; it was penned by Associate Justice Diosdado M. Peralta (later Presiding Justice, now a Member of the Court), and concurred in by Associate Justice Teresita J. Leonardo-De Castro (later Presiding Justice, now a Member of the Court) who wrote a concurring and dissenting opinion, Associate Justice Gregory S. Ong, Associate Justice Godofredo Legaspi (retired), and Associate Justice Francisco H. Villaruz, Jr., who submitted a separate concurring opinion.

subject to disposition only upon further orders of this Court. If in case stock dividends are declared, the conditions on the sale, pledge, mortgage and other disposition of any of the shares as above-mentioned in conditions 1, 2 and 3, shall likewise apply.

In so far as the matters raised by Defendants Eduardo Cojuangco, *et al*. in their "Omnibus Motion" dated September 23, 1996 and "Reply to PCGG's Comment/Opposition with Motion to Order PCGG to Complete Inventory, to Nullify Writs of Sequestration and to Enjoin PCGG from Voting Sequestered Shares of Stock" dated January 3, 1997, considering the above conclusion, this Court rules that it is no longer necessary to delve into the matters raised in the said Motions.

SO ORDERED.[37]

Cojuangco, *et al.* moved for the modification of the resolution,[38] praying for the deletion of the conditions for allegedly restricting their rights. The Republic also sought reconsideration of the resolution.[39]

Eventually, on June 24, 2005, the Sandiganbayan denied both motions, but reduced the restrictions thuswise:

WHEREFORE, the "Motion for Reconsideration (Re: Resolution dated September 17, 2003 Promulgated on October 8, 2003)" dated October 24, 2003 of Plaintiff Republic is hereby DENIED for lack of merit. As to the "Motion for Modification (Re: Resolution Promulgated on October 8, 2003)" dated October 22, 2003, the same is hereby DENIED for lack of merit. However, the restrictions imposed by this Court in its Resolution dated September 17, 2003 and promulgated on October 8, 2003 shall now read as follows:

"Despite the lifting of the writs of sequestration, since the Republic continues to hold a claim on the shares which is yet to be resolved, it is hereby ordered that the following shall be

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[37] Resolution dated October 8, 2003 in Civil Case No. 0033-F, *supra*, note 5, pp. 53-55.

[38] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 486.

[39] *Id.*

annotated in the relevant corporate books of San Miguel Corporation:

"a) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case.

"b) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares.

"SO ORDERED."[40]

Pending resolution of the motions relative to the lifting of the writs of sequestration, SMC filed a *Motion for Intervention* with attached *Complaint-in-Intervention*,[41] alleging, among other things, that it had an interest in the matter in dispute between the Republic and defendants CIIF Companies for being the owner by purchase of a portion (*i.e.*, 25,450,000 SMC shares covered by Stock Certificate Nos. A0004129 and B0015556 of the so-called "CIIF block of SMC shares of stock" sought to be recovered as alleged ill-gotten wealth).

Although Cojuangco, *et al.* interposed no objection to SMC's intervention, the Republic opposed,[42] averring that the intervention would be improper and was a mere attempt to litigate anew issues already raised and passed upon by the Supreme Court. COCOFED similarly opposed SMC's intervention,[43] and Ursua adopted its opposition.

On May 6, 2004, the Sandiganbayan denied SMC's motion to intervene.[44] SMC sought reconsideration,[45] and its motion to that effect was opposed by COCOFED and the Republic.

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[40] Resolution dated June 24, 2005, *supra*, note 6, p. 81.

[41] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 487.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*, p. 488.

On May 7, 2004, the Sandiganbyan granted the Republic's *Motion for Judgment on the Pleadings and/or Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and COCOFED, et al.)* and rendered a *Partial Summary Judgment*,[46] the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, *et al.*) filed by Plaintiff is hereby GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:

1. Southern Luzon Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;
4. Arc Investors, Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. SMC Officers Corps. Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO

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[46] *Rollo* (G.R. No. 169203), pp. 655-718.

ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT IN-TRUST FOR ALL THE COCONUT FARMERS AND ORDERED RECONVEYED TO THE GOVERNMENT.

Let the trial of this Civil Case proceed with respect to the issues which have not been disposed of in this partial Summary Judgment, including the determination of whether the CIIF Block of SMC Shares adjudged to be owned by the Government represents 27% of the issued and outstanding capital stock of SMC according to plaintiff or 31.3% of said capital stock according to COCOFED, *et al*. and Ballares, *et al*.

SO ORDERED.[47]

In the same resolution of May 7, 2004, the Sandiganbayan considered the *Motions to Dismiss* filed by Cojuangco, *et al*. on August 2, 2000 and by Enrile on September 4, 2000 as overtaken by the Republic's *Motion for Judgment on the Pleadings and/or Partial Summary Judgment*.[48]

On May 25, 2004, Cojuangco, *et al*. filed their *Motion for Reconsideration.*[49]

COCOFED filed its so-called *Class Action Omnibus Motion: (a) Motion to Dismiss for Lack of Subject Matter Jurisdiction and Alternatively, (b) Motion for Reconsideration* dated May 26, 2004.[50]

The Republic submitted its *Consolidated Comment*.[51]

Relative to the resolution of May 7, 2004, the Sandiganbayan issued its resolution of December 10, 2004,[52] denying the

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[47] *Id.,* pp. 717-718.

[48] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 489.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] Resolution dated December 10, 2004 in Civil Case No. 0033-F, *supra*, note 4, pp. 61-63; it was penned by Associate Justice Leonardo-De Castro,

Republic's *Motion for Partial Summary Judgment (Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendants Eduardo M. Cojuangco, Jr. and the defendant Cojuangco Companies)* upon the following reasons:

In the instant case, a circumspect review of the records show that while there are facts which appear to be undisputed, there are also genuine factual issues raised by the defendants which need to be threshed out in a full-blown trial. Foremost among these issues are the following:

1) What are the "various sources" of funds, which the defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?

2) Whether or not such funds acquired from alleged "various sources" can be considered coconut levy funds;

3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PC, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;

4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?

Answers to these issues are not evident from the submissions of the plaintiff and must therefore be proven through the presentation of relevant and competent evidence during trial. A perusal of the subject Motion shows that the plaintiff hastily derived conclusions from the defendants' statements in their previous pleadings although such conclusions were not supported by categorical facts but only mere inferences. In the Reply dated

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and concurred in by Associate Justice Peralta and Associate Justice Roland B. Jurado; bold emphasis supplied.

October 2, 2003, the plaintiff construed the supposed meaning of the phrase "*various sources*" (referring to the source of defendant Cojuangco's funds which were used to acquire the subject SMC shares), which plaintiff said was quite obvious from the defendants' admission in his Pre-Trial Brief, which we quote:

> "According to Cojuangco's own Pre-Trial Brief, these so-called 'various sources,' *i.e.*, the sources from which he obtained the funds he claimed to have used in buying the 20% SMC shares are not in fact 'various' as he claims them to be. He says he obtained 'loans' from UCPB and 'advances' from the CIIF Oil Mills. He even goes as far as to admit that his *only* evidence in this case would have been 'records of UCPB' and a 'representative of the CIIF Oil Mills' obviously the 'records of UCPB' relate to the 'loans' that Cojuangco claims to have obtained from UCPB — of which he was President and CEO — while the 'representative of the CIIF Oil Mills' will obviously testify on the 'advances' Cojuangco obtained from CIIF Oil Mills — of which he was also the President and CEO."

From the foregoing premises, plaintiff went on to conclude that:

> "These admissions of defendant Cojuangco are outright admissions that he (1) took money from the bank entrusted by law with the administration of coconut levy funds and (2) took more money from the very corporations/oil mills in which part of those coconut levy funds (the CIIF) was placed — treating the funds of UCPB and the CIIF as his own personal capital to buy 'his' SMC shares."

We cannot agree with the plaintiff's contention that the defendant's statements in his Pre-Trial Brief regarding the presentation of a possible CIIF witness as well as UCPB records, can already be considered as admissions of the defendant's exclusive use and misuse of coconut levy funds to acquire the subject SMC shares and defendant Cojuangco's alleged taking advantage of his positions to acquire the subject SMC shares. Moreover, in ruling on a motion for summary judgment, the court "should take that view of the evidence most favorable to the party against whom it is directed, giving such party the benefit of all inferences." Inasmuch as this issue cannot be resolved merely from an interpretation of the defendant's

statements in his brief, the UCPB records must be produced and the CIIF witness must be heard to ensure that the conclusions that will be derived have factual basis and are thus, valid.

WHEREFORE, in view of the forgoing, the Motion for Partial Summary Judgment dated July 11, 2003 is hereby DENIED for lack of merit.

SO ORDERED.

Thereafter, on December 28, 2004, the Sandiganbayan resolved the other pending motions,[53] *viz*:

WHEREFORE, in view of the foregoing, the Motion for Reconsideration dated May 25, 2004 filed by defendant Eduardo M. Cojuangco, Jr., *et al*. and the Class Action Omnibus Motion: (a) Motion to Dismiss for Lack of Subject Matter Jurisdiction and Alternatively, (b) Motion for Reconsideration dated May 26, 2004 filed by COCOFED, *et al*. and Ballares, *et al*. are hereby DENIED for lack of merit.

SO ORDERED.[54]

COCOFED moved to set the case for trial,[55] but the Republic opposed the motion.[56] On their part, Cojuangco, *et al.* also moved to set the trial,[57] with the Republic similarly opposing the motion.[58]

On March 23, 2006, the Sandiganbayan granted the motions to set for trial and set the trial on August 8, 10, and 11, 2006.[59]

In the meanwhile, on August 9, 2005, the Republic filed a *Motion for Execution of Partial Summary Judgment (re: CIIF*

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[53] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 490.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*, p. 491.

[59] *Id.*

block of SMC Shares of Stock),[60] contending that an execution pending appeal was justified because any appeal by the defendants of the Partial Summary Judgment would be merely dilatory.

Cojuangco, *et al.* opposed the motion.[61]

The Sandiganbayan denied the Republic's *Motion for Execution of Partial Summary Judgment (re: CIIF block of SMC Shares of Stock*),[62] to wit:

WHEREFORE, the MOTION FOR EXECUTION OF PARTIAL SUMMARY JUDGMENT (RE: CIIF BLOCK OF SMC SHARES OF STOCK) dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.

The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion which will now read, as follows:

WHEREFORE, in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, *et al.*) filed by Plaintiff is hereby GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:

1. Southern Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;

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[60] *Id.*, p. 492.

[61] *Id.*

[62] *Id.*

4. Arc Investors, Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. SMC Officers Corps, Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT IN TRUST FOR ALL THE COCONUT FARMERS AND ORDERED RECONVEYED TO THE GOVERNMENT.

The aforementioned Partial Summary Judgment is now deemed a separate appealable judgment which finally disposes of the ownership of the CIIF Block of SMC Shares, without prejudice to the continuation of proceedings with respect to the remaining claims particularly those pertaining to the Cojuangco, *et al*. block of SMC shares.

SO ORDERED.[63]

During the pendency of the Republic's motion for execution, Cojuangco, *et al.* filed a *Motion for Authority to Sell San Miguel Corporation (SMC) shares*, praying for leave to allow the sale of SMC shares to proceed, exempted from the conditions set forth in the resolutions promulgated on October 3, 2003 and June 24, 2005.[64] The Republic opposed, contending that the requested leave to sell would be tantamount to removing jurisdiction over the *res* or the subject of litigation.[65]

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[63] *Id.*, pp. 492-493.

[64] *Id.*, pp. 493-494.

[65] *Id.*, p. 494.

However, the Sandiganbayan eventually granted the *Motion for Authority to Sell San Miguel Corporation (SMC) shares*.[66]

Thereafter, Cojuangco, *et al.* manifested to the Sandiganbayan that the shares would be sold to the San Miguel Corporation Retirement Plan.[67] Ruling on the manifestations of Cojuangco, *et al.*, the Sandiganbayan issued its resolution of July 30, 2007 allowing the sale of the shares, to wit:

This notwithstanding however, while the Court exempts the sale from the express condition that it shall be subject to the outcome of the case, defendants Cojuangco, *et al*. may well be reminded that despite the deletion of the said condition, they cannot transfer to any buyer any interest higher than what they have. No one can transfer a right to another greater than what he himself has. Hence, in the event that the Republic prevails in the instant case, defendants Cojuangco, *et al*. hold themselves liable to their transferees-buyers, especially if they are buyers in good faith and for value. In such eventuality, defendants Cojuangco, *et al*. cannot be shielded by the cloak of principle of *caveat emptor* because case law has it that this rule only requires the purchaser to exercise such care and attention as is usually exercised by ordinarily prudent men in like business affairs, and only applies to defects which are open and patent to the service of one exercising such care.

Moreover, said defendants Eduardo M. Cojuangco, *et al*. are hereby ordered to render their report on the sale within ten (10) days from completion of the payment by the San Miguel Corporation Retirement Plan.

SO ORDERED.[68]

Cojuangco, *et al.* later rendered a complete accounting of the proceeds from the sale of the Cojuangco block of shares of SMC stock, informing that a total amount of ₱4,786,107,428.34 had been paid to the UCPB as loan repayment.[69]

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[66] *Id.*

[67] *Id.*

[68] *Id.*, pp. 494-495.

[69] *Id.*, p. 495.

It appears that the trial concerning the disputed block of shares was not scheduled because the consideration and resolution of the aforecited motions for summary judgment occupied much of the ensuing proceedings.

At the hearing of August 8, 2006, the Republic manifested[70] that it did not intend to present any testimonial evidence and asked for the marking of certain exhibits that it would have the Sandiganbayan take judicial notice of. The Republic was then allowed to mark certain documents as its Exhibits A to I, inclusive, following which it sought and was granted time within which to formally offer the exhibits.

On August 31, 2006, the Republic filed its *Manifestation of Purposes (Re: Matters Requested or Judicial Notice on the 20% Shares in San Miguel Corporation Registered in the Respective Names of defendant Eduardo M. Cojuangco, Jr. and the defendant Cojuangco Companies)*.[71]

On September 18, 2006, the Sandiganbayan issued the following resolution,[72] to wit:

> Acting on the Manifestation of Purposes (Re: Matters Requested or Judicial Notice on the 20% Shares in San Miguel Corporation Registered in the Respective names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies) dated 28 August 2006 filed by the plaintiff, which has been considered its formal offer of evidence, and the Comment of Defendants Eduardo M. Cojuangco, Jr., *et al.* on Plaintiff's "Manifestation of Purposes …" Dated August 30, 2006 dated September 15, 2006, the court resolves to ADMIT all the exhibits offered, *i.e.*:
>
> - Exhibit "A" – the Answer of defendant Eduardo M. Cojuangco, Jr. to the Third Amended Complaint (Subdivided) dated June 23, 1999, as well as the sub-markings (Exhibit "A-1" to "A-4";
> - Exhibit "B" – the "Pre-Trial Brief dated January 11, 2000 of defendant CIIF Oil Mills and fourteen (14) CIIF Holding

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[70] *Id.*

[71] *Id.*

[72] *Rollo* (G.R. No. 180702), Vol. 3, pp. 882-884.

Companies, as well as the sub-markings Exhibits "B-1" and "B-2"

- Exhibit "C" – the Pre-Trial Brief dated January 11, 2000 of defendant Eduardo M. Cojuangco, Jr. as well as the sub-markings Exhibits "C-1", "C-1-a" and "C-1-b";
- Exhibit "D" – the Plaintiff's Motion for Summary Judgment [Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies] dated July 11, 2003, as well as the sub-markings Exhibits "D-1" to "D-4"

the said exhibits being part of the record of the case, as well as

- Exhibit "E" – Presidential Decree No. 961 dated July 11, 1976;
- Exhibit "F" – Presidential Decree No. 755 dated July 29, 1975;
- Exhibit "G" – Presidential Decree No. 1468 dated June 11, 1978;
- Exhibit "H" – Decision of the Supreme Court in *Republic vs. COCOFED, et al.*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462

the aforementioned exhibits being matters of public record.

The admission of these exhibits is being made over the objection of the defendants Cojuangco, *et al*. as to the relevance thereof and as to the purposes for which they were offered in evidence, which matters shall be taken into consideration by the Court in deciding the case on the merits.

The trial hereon shall proceed on November 21, 2006, at 8:30 in the morning as previously scheduled.[73]

During the hearing on November 24, 2006, Cojuangco, *et al.* filed their *Submission and Offer of Evidence of Defendants*,[74] formally offering in evidence certain documents to substantiate their counterclaims, and informing that they found no need to present countervailing evidence because the Republic's evidence did not prove the allegations of the *Complaint*. On December 5,

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[73] *Id.*

[74] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 496.

2006, after the Republic submitted its *Comment*,[75] the Sandiganbayan admitted the exhibits offered by Cojuangco, *et al.*, and granted the parties a non-extendible period within which to file their respective memoranda and reply-memoranda.

Thereafter, on February 23, 2007, the Sandiganbayan considered the case submitted for decision.[76]

ISSUES

The various issues submitted for consideration by the Court are summarized hereunder.

G.R. No. 166859

The Republic came to the Court *via* petition for *certiorari*[77] to assail the denial of its *Motion for Partial Summary Judgment* through the resolution promulgated on December 10, 2004, insisting that the Sandiganbayan thereby committed grave abuse of discretion: (*a*) in holding that the various sources of funds used in acquiring the SMC shares of stock remained disputed; (*b*) in holding that it was disputed whether or not Cojuangco had served in the governing bodies of PCA, UCPB, and/or the CIIF Oil Mills; and (*c*) in not finding that Cojuangco had taken advantage of his position and had violated his fiduciary obligations in acquiring the SMC shares of stock in issue.

The Court will consider and resolve the issues thereby raised alongside the issues presented in G.R. No. 180702.

G.R. No. 169203

In the resolution promulgated on October 8, 2003, the Sandiganbayan declared as "automatically lifted for being null and void" nine writs of sequestration (WOS) issued against properties of Cojuangco and Cojuangco companies, considering that: (*a*) eight of them (*i.e.*, WOS No. 86-0062 dated April 21,

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[75] *Id.*

[76] *Id.*, p. 497.

[77] *Rollo* (G.R. No. 166859), pp. 2-48.

1986; WOS No. 86-0069 dated April 22, 1986; WOS No. 86-0085 dated May 9, 1986; WOS No. 86-0095 dated May 16, 1986; WOS No. 86-0096 dated May 16, 1986; WOS No. 86-0097 dated May 16, 1986; WOS No. 86-0098 dated May 16, 1986; and WOS No. 87-0218 dated May 27, 1987) had been issued by only one PCGG Commissioner, contrary to the requirement of Section 3 of the Rules of the PCGG for at least two Commissioners to issue the WOS; and (*b*) the ninth (*i.e.*, WOS No. 86-0042 dated April 8, 1986), although issued prior to the promulgation of the Rules of the PCGG requiring at least two Commissioners to issue the WOS, was void for being issued *without prior determination* by the PCGG of a *prima facie* basis for sequestration.

Nonetheless, despite its lifting of the nine WOS, the Sandiganbayan prescribed four conditions to be still "annotated in the relevant corporate books of San Miguel Corporation" considering that the Republic "continues to hold a claim on the shares which is yet to be resolved."[78]

In its resolution promulgated on June 24, 2005, the Sandiganbayan denied the Republic's *Motion for Reconsideration*

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[78] The four conditions were the following:

(1) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case;

(2) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares;

(3) in the event of sale, mortgage or other disposition of the shares, by the Defendants Cojuangco, *et al*., the consideration therefore, whether in cash or in kind, shall be placed in escrow with Land Bank of the Philippines, subject to disposition only upon further orders of this Court; and

(4) any cash dividends that are declared on the shares shall be placed in escrow with the Land Bank of the Philippines, subject to disposition only upon further orders of this Court. If in case stock dividends are declared, the conditions on the sale, pledge, mortgage and other disposition of any of the shares as above-mentioned in conditions 1, 2 and 3, shall likewise apply.

filed *vis-a-vis* the resolution promulgated on October 8, 2003, but reduced the conditions earlier imposed to only two.[79]

On September 1, 2005, the Republic filed a petition for *certiorari*[80] to annul the resolutions promulgated on October 8, 2003 and on June 24, 2005 on the ground that the Sandiganbayan had thereby committed grave abuse of discretion:

I.

XXX IN LIFTING WRIT OF SEQUESTRATION NOS. 86-0042 AND 87-0218 DESPITE EXISTENCE OF THE BASIC REQUISITES FOR THE VALIDITY OF SEQUESTRATION.

II.

XXX WHEN IT DENIED PETITIONER'S ALTERNATIVE PRAYER IN ITS MOTION FOR RECONSIDERATION FOR THE ISSUANCE OF AN ORDER OF SEQUESTRATION AGAINST ALL THE SUBJECT SHARES OF STOCK IN ACCORDNCE WITH THE RULING IN *REPUBLIC VS. SANDIGANBAYAN*, 258 SCRA 685 (1996).

III.

XXX IN SUBSEQUENTLY DELETING THE LAST TWO (2) CONDITIONS WHICH IT EARLIER IMPOSED ON THE SUBJECT SHARES OF STOCK.[81]

G.R. No. 180702

On November 28, 2007, the Sandiganbayan promulgated its decision,[82] decreeing as follows:

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[79] The modified conditions were reduced to only two, namely:

(a) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al.* shall be subject to the outcome of this case.

(b) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al.* prior to any sale, pledge, mortgage or other disposition of the shares.

[80] *Rollo* (G.R. No. 169203), pp. 2-39.

[81] *Id.,* p. 11.

[82] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7; it was penned by Associate Justice Peralta, with the concurrence of

WHEREFORE, in view of all the foregoing, the Court is constrained to DISMISS, as it hereby DISMISSES, the Third Amended Complaint in subdivided Civil Case No. 0033-F for failure of plaintiff to prove by preponderance of evidence its causes of action against defendants with respect to the twenty percent (20%) outstanding shares of stock of San Miguel Corporation registered in defendants' names, denominated herein as the "Cojuangco, *et al*. block" of SMC shares. For lack of satisfactory warrant, the counterclaims in defendants' Answers are likewise ordered dismissed.

SO ORDERED.

Hence, the Republic appeals, positing:

I.

COCONUT LEVY FUNDS ARE PUBLIC FUNDS. THE SMC SHARES, WHICH WERE ACQUIRED BY RESPONDENTS COJUANGCO, JR. AND THE COJUANGCO COMPANIES WITH THE USE OF COCONUT LEVY FUNDS — IN VIOLATION OF RESPONDENT COJUANGCO, JR.'S FIDUCIARY OBLIGATION — ARE, NECESSARILY, PUBLIC IN CHARACTER AND SHOULD BE RECONVEYED TO THE GOVERNMENT.

II.

PETITIONER HAS CLEARLY DEMONSTRATED ITS ENTITLEMENT, AS A MATTER OF LAW, TO THE RELIEFS PRAYED FOR.[83]

and urging the following issues to be resolved, to wit:

I.

WHETHER THE HONORABLE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED CIVIL CASE NO. 0033-F; AND

Presiding Justice Leonardo-De Castro and Associate Justice Efren N. De la Cruz.

[83] Petition, p. 26; *supra*, note 3, p. 421.

II.

WHETHER OR NOT THE SUBJECT SHARES IN SMC, WHICH WERE ACQUIRED BY, AND ARE IN THE RESPECTIVE NAMES OF RESPONDENTS COJUANGCO, JR. AND THE COJUANGCO COMPANIES, SHOULD BE RECONVEYED TO THE REPUBLIC OF THE PHILIPPINES FOR HAVING BEEN ACQUIRED USING COCONUT LEVY FUNDS.[84]

On their part, the petitioners-in-intervention[85] submit the following issues, to wit:

I

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED AND DECIDED THE CASE *A QUO* IN VIOLATION OF LAW AND APPLICABLE RULINGS OF THE HONORABLE COURT IN RULING THAT, WHILE ADMITTEDLY THE SUBJECT SMC SHARES WERE PURCHASED FROM LOAN PROCEEDS FROM UCPB AND ADVANCES FROM THE CIIF OIL MILLS, SAID SUBJECT SMC SHARES ARE NOT PUBLIC PROPERTY

II

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED AND DECIDED THE CASE *A QUO* IN VIOLATION OF LAW AND APPLICABLE RULINGS OF THE HONORABLE COURT IN FAILING TO RULE THAT, EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT LOAN PROCEEDS FROM UCPB ARE NOT PUBLIC FINDS (sic), STILL, SINCE RESPONDENT COJUANGCO, IN THE PURCHASE OF THE SUBJECT SMC SHARES FROM SUCH LOAN PROCEEDS, VIOLATED HIS FIDUCIARY DUTIES AND TOOK A COMMERCIAL OPPORTUNITY THAT RIGHTFULLY BELONGED TO UCPB (A PUBLIC CORPORATION), THE SUBJECT SMC SHARES SHOULD REVERT BACK TO THE GOVERNMENT.

RULING

We deny all the petitions of the Republic.

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[84] *Id.*, pp. 420-421.

[85] *Rollo*, (G.R. No. 180702), Volume 1, pp. 18-77.

I

Lifting of nine WOS for violation of PCGG Rules did not constitute grave abuse of discretion

Through its resolution promulgated on June 24, 2005, assailed on *certiorari* in G.R. No. 169203, the Sandiganbayan lifted the nine WOS for the following reasons, to wit:

Having studied the antecedent facts, this Court shall now resolve the pending incidents especially defendants' "Motion to Affirm that the Writs or Orders of Sequestration Issued on Defendants' Properties Were Unauthorized, Invalid and Never Became Effective" dated March 5, 1999.

Section 3 of the PCGG Rules and Regulations promulgated on April 11, 1986, provides:

"Sec. 3. Who may issue. — A writ of sequestration or a freeze or hold order may be issued by the Commission upon the *authority of at least two Commissioners,* based on the affirmation or complaint of an interested party or *motu propio* (sic) the issuance thereof is warranted."

In this present case, of all the questioned writs of sequestration issued after the effectivity of the PCGG Rules and Regulations or after April 11, 1986, only writ no. 87-0218 issued on May 27, 1987 complied with the requirement that it be issued by at least two Commissioners, the same having been issued by Commissioners Ramon E. Rodrigo and Quintin S. Doromal. However, even if Writ of Sequestration No. 87-0218 complied with the requirement that the same be issued by at least two Commissioners, the records fail to show that it was issued with factual basis or with factual foundation as can be seen from the Certification of the Commission Secretary of the PCGG of the excerpt of the minutes of the meeting of the PCGG held on May 26, 1987, stating therein that:

"The Commission approved the recommendation of Dir. Cruz to sequester all the shares of stock, assets, records, and documents of Balete Ranch, Inc. and the appointment of the Fiscal Committee with ECI Challenge, Inc./Pepsi-Cola for Balete Ranch, Inc. and the Aquacor Marketing Corp. vice Atty. S. Occena. The objective is to consolidate the Fiscal Committee activities covering three associated entities of Mr. Eduardo

> Cojuangco.Upon recommendation of Comm. Rodrigo, the reconstitution of the Board of Directors of the three companies was deferred for further study."

Nothing in the above-quoted certificate shows that there was a prior determination of a factual basis or factual foundation. It is the absence of a *prima facie* basis for the issuance of a writ of sequestration and not the lack of authority of two (2) Commissioners which renders the said writ void *ab initio*. Thus, being the case, Writ of Sequestration No. 87-0218 must be automatically lifted.

As declared by the Honorable Supreme Court in two cases it has decided,

> "The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect which rendered the sequestration of respondent corporation and its properties void *ab initio*." And
>
> "The corporation or entity against which such writ is directed will not be able to visually determine its validity, unless the required signatures of at least two commissioners authorizing its issuance appear on the very document itself. The issuance of sequestration orders requires the existence of a *prima facie* case. The two — commissioner rule is obviously intended to assure a collegial determination of such fact. In this light, a writ bearing only one signature is an obvious transgression of the PCGG Rules."

Consequently, the writs of sequestration nos. 86-0062, 86-0069, 86-0085, 86-0095, 86-0096, 86-0097 and 86-0098 must be lifted for not having complied with the pertinent provisions of the PCGG Rules and Regulations, all of which were issued by only one Commissioner and after April 11, 1986 when the PCGG Rules and Regulations took effect, an utter disregard of the PCGG's Rules and Regulations. The Honorable Supreme Court has stated that:

> "Obviously, Section 3 of the PCGG Rules was intended to protect the public from improvident, reckless and needless sequestrations of private property. And since these Rules were issued by Respondent Commission, it should be the first entity to observe them."

Anent the writ of sequestration no. 86-0042 which was issued on April 8, 1986 or prior to the promulgation of the PCGG Rules and

Regulations on April 11, 1986, the same cannot be declared void on the ground that it was signed by only one Commissioner because at the time it was issued, the Rules and Regulations of the PCGG were not yet in effect. However, it again appears that there was no prior determination of the existence of a *prima facie* basis or factual foundation for the issuance of the said writ. The PCGG, despite sufficient time afforded by this Court to show that a *prima facie* basis existed prior to the issuance of Writ No. 86-0042, failed to do so. Nothing in the records submitted by the PCGG in compliance of the Resolutions and Order of this Court would reveal that a meeting was held by the Commission for the purpose of determining the existence of a *prima facie* evidence prior to its issuance. In a case decided by the Honorable Supreme Court, wherein it involved a writ of sequestration issued by the PCGG on March 19, 1986 against all assets, movable and immovable, of Provident International Resources Corporation and Philippine Casino Operators Corporation, the Honorable Supreme Court enunciated:

> "The questioned sequestration order was, however issued on March 19, 1986, prior to the promulgation of the PCGG Rules and Regulations. As a consequence, we cannot reasonably expect the commission to abide by said rules, which were nonexistent at the time the subject writ was issued by then Commissioner Mary Concepcion Bautista. Basic is the rule that no statute, decree, ordinance, rule or regulation (and even policies) shall be given retrospective effect unless explicitly stated so. We find no provision in said Rules which expressly gives them retroactive effect, or implies the abrogation of previous writs issued not in accordance with the same Rules. Rather, what said Rules provide is that they "shall be effective immediately," which in legal parlance, is understood as "upon promulgation." Only penal laws are given retroactive effect insofar as they favor the accused.
>
> We distinguish this case from *Republic vs. Sandiganbayan, Romualdez and Dio Island Resort, G.R. No. 88126, July 12, 1996* where the sequestration order against Dio Island Resort, dated April 14, 1986, was prepared, issued and signed not by two commissioners of the PCGG, but by the head of its task force in Region VIII. In holding that said order was not valid since it was not issued in accordance with PCGG Rules and Regulations, we explained:

> "(Sec. 3 of the PCGG Rules and Regulations), couched in clear and simple language, leaves no room for interpretation. On the basis thereof, it is indubitable that under no circumstances can a sequestration or freeze order be validly issued by one not a commissioner of the PCGG.
>
> x x x x x x x x x
>
> Even assuming *arguendo* that Atty. Ramirez had been given prior authority by the PCGG to place Dio Island Resort under sequestration, nevertheless, the sequestration order he issued is still void since PCGG may not delegate its authority to sequester to its representatives and subordinates, and any such delegation is valid and ineffective."

We further said:

"In the instant case, there was clearly no prior determination made by the PCGG of a *prima facie* basis for the sequestration of Dio Island Resort, Inc. x x x

x x x x x x x x x

The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect which rendered the sequestration of respondent corporation and its properties void *ab initio*. Being void *ab initio*, it is deemed nonexistent, as though it had never been issued, and therefore is not subject to ratification by the PCGG.

What were obviously lacking in the above case were the basic requisites for the validity of a sequestration order which we laid down in *BASECO vs. PCGG, 150 SCRA 181, 216, May 27, 1987,* thus:

"Section (3) of the Commission's Rules and regulations provides that sequestration or freeze (and takeover) orders issue upon the authority of at least two commissioners, based on the *affirmation or complaint of an interested party, or motu propio* (sic) when the Commission has *reasonable grounds* to believe that the issuance thereof is warranted."

In the case at bar, there is no question as to the presence of *prima facie* evidence justifying the issuance of the sequestration order against respondent corporations. But the

said order cannot be nullified for lack of the other requisite (authority of at least two commissioners) since, as explained earlier, such requisite was nonexistent at the time the order was issued."

As to the argument of the Plaintiff Republic that Defendants Cojuangco, *et al*. have not shown any contrary *prima facie* proof that the properties subject matter of the writs of sequestration were legitimate acquisitions, the same is misplaced. It is a basic legal doctrine, as well as many times enunciated by the Honorable Supreme Court that when a *prima facie* proof is required in the issuance of a writ, the party seeking such extraordinary writ must establish that it is entitled to it by complying strictly with the requirements for its issuance and not the party against whom the writ is being sought for to establish that the writ should not be issued against it.

According to the Republic, the Sandiganbayan thereby gravely abused its discretion in: (*a*) in lifting WOS No. 86-0042 and No. 87-0218 despite the basic requisites for the validity of sequestration being existent; (*b*) in denying the Republic's alternative prayer for the issuance of an order of sequestration against all the subject shares of stock in accordance with the ruling in *Republic v. Sandiganbayan*, 258 SCRA 685, as stated in its *Motion For Reconsideration*; and (*c*) in deleting the last two conditions the Sandiganbayan had earlier imposed on the subject shares of stock.

We sustain the lifting of the nine WOS for the reasons made extant in the assailed resolution of October 8, 2003, *supra*.

Section 3 of the Rules of the PCGG, promulgated on April 11, 1986, provides:

Section 3. *Who may issue*. — A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted.

Conformably with Section 3, *supra*, WOS No. 86-0062 dated April 21, 1986; WOS No. 86-0069 dated April 22, 1986; WOS No. 86-0085 dated May 9, 1986; WOS No. 86-0095 dated

May 16, 1986; WOS No. 86-0096 dated May 16, 1986; WOS No. 86-0097 dated May 16, 1986; and WOS No. 86-0098 dated May 16, 1986 were lawfully and correctly nullified considering that only one PCGG Commissioner had issued them.

Similarly, WOS No. 86-0042 dated April 8, 1986 and WOS No. 87-0218 dated May 27, 1987 were lawfully and correctly nullified — notwithstanding that WOS No. 86-0042, albeit signed by only one Commissioner (*i.e.*, Commissioner Mary Concepcion Bautista), was not at the time of its issuance subject to the two-Commissioners rule, and WOS No. 87-0218, albeit already issued under the signatures of two Commissioners — considering that both had been issued without a prior determination by the PCGG of a *prima facie* basis for the sequestration.

Plainly enough, the irregularities infirming the issuance of the several WOS could not be ignored in favor of the Republic and resolved against the persons whose properties were subject of the WOS. Where the Rules of the PCGG instituted safeguards under Section 3, *supra*, by requiring the concurrent signatures of two Commissioners to every WOS issued and the existence of a *prima facie* case of ill gotten wealth to support the issuance, the non-compliance with either of the safeguards nullified the WOS thus issued. It is already settled that sequestration, due to its tendency to impede or limit the exercise of proprietary rights by private citizens, is construed *strictly* against the State, conformably with the legal maxim that statutes in derogation of common rights are generally strictly construed and rigidly confined to the cases clearly within their scope and purpose.[86]

Consequently, the nullification of the nine WOS, being in implementation of the safeguards the PCGG itself had instituted, did not constitute any abuse of its discretion, least of all grave, on the part of the Sandiganbayan.

Nor did the Sandiganbayan gravely abuse its discretion in reducing from four to only two the conditions imposed for the

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[86] *Republic v. Sandiganbayan*, G.R. No. 119292, July 31, 1998, 293 SCRA 440, 455-456.

lifting of the WOS. The Sandiganbayan thereby acted with the best of intentions, being all too aware that the claim of the Republic to the sequestered assets and properties might be prejudiced or harmed *pendente lite* unless the protective conditions were annotated in the corporate books of SMC. Moreover, the issue became academic following the Sandiganbayan's promulgation of its decision dismissing the Republic's *Amended Complaint*, which thereby removed the stated reason — "*the Republic continues to hold a claim on the shares which is yet to be resolved*" — underlying the need for the annotation of the conditions (whether four or two).

II
The Concept and Genesis of Ill-Gotten Wealth in the Philippine Setting

A brief review of the Philippine law and jurisprudence pertinent to *ill-gotten wealth* should furnish an illuminating backdrop for further discussion.

In the immediate aftermath of the peaceful 1986 EDSA Revolution, the administration of President Corazon C. Aquino saw to it, among others, that rules defining the authority of the government and its instrumentalities were promptly put in place. It is significant to point out, however, that the administration likewise defined the limitations of the authority.

The first official issuance of President Aquino, which was made on February 28, 1986, or just two days after the EDSA Revolution, was Executive Order (E.O.) No. 1, which created the Presidential Commission on Good Government (PCGG). Ostensibly, E.O. No. 1 was the first issuance in light of the EDSA Revolution having come about mainly to address the pillage of the nation's wealth by President Marcos, his family, and cronies.

E.O. No. 1 contained only two WHEREAS Clauses, to wit:

WHEREAS, **vast resources of the government** have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;

WHEREAS, there is an urgent need to recover **all ill-gotten wealth**;[87]

Paragraph (4) of E.O. No. 2[88] further required that the wealth, to be ill-gotten, must be "acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines."

Although E.O. No. 1 and the other issuances dealing with ill-gotten wealth (*i.e*., E.O. No. 2, E.O. No. 14, and E.O. No. 14-A) only identified the subject matter of ill-gotten wealth and the persons who could amass ill-gotten wealth and did not include an explicit definition of *ill-gotten wealth*, we can still discern the meaning and concept of *ill-gotten wealth* from the WHEREAS Clauses themselves of E.O. No. 1, in that *ill-gotten wealth* consisted of the "*vast resources of the government*" amassed by "former President Ferdinand E. Marcos, his immediate family, relatives and close associates both here and abroad." It is clear, therefore, that *ill-gotten wealth* would not include all the properties of President Marcos, his immediate family, relatives, and close associates but only the part that originated from the "vast resources of the government."

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[87] Bold emphasis supplied.

[88] (4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were **acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines**.

In time and unavoidably, the Supreme Court elaborated on the meaning and concept of *ill-gotten wealth*. In *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*,[89] or *BASECO*, for the sake of brevity, the Court held that:

> xxx until it can be determined, through appropriate judicial proceedings, **whether the property was in truth "ill-gotten,"** *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of **funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions,** or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.[90]

The *BASECO* definition of *ill-gotten wealth* was reiterated in *Presidential Commission on Good Government v. Lucio C. Tan*,[91] where the Court said:

> On this point, we find it relevant to define "ill-gotten wealth." In *Bataan Shipyard and Engineering Co., Inc.*, this Court described "ill-gotten wealth" as follows:
>
> > "Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction."

Concerning respondents' shares of stock here, there is no evidence presented by petitioner that they belong to the Government of the

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[89] G.R. No. 75885, May 27, 1987, 150 SCRA 181, 209.

[90] Bold emphasis supplied.

[91] G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, 481.

Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions. Nor is there evidence that respondents, taking undue advantage of their connections or relationship with former President Marcos or his family, relatives and close associates, were able to acquire those shares of stock.

Incidentally, in its 1998 ruling in *Chavez v. Presidential Commission on Good Government*,[92] the Court rendered an identical definition of *ill-gotten wealth*, *viz*:

> xxx. We may also add that 'ill-gotten wealth,' by its very nature, assumes a public character. Based on the aforementioned Executive Orders, 'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through **or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships**, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." **Clearly, the assets and properties referred to supposedly originated from the government itself**. **To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury**, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.

All these judicial pronouncements demand two concurring elements to be present before assets or properties were considered as *ill-gotten wealth,* namely: (*a*) they must have "originated from the government itself," and (*b*) they must have been taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means*.

But settling the sources and the kinds of assets and property covered by E.O. No. 1 and related issuances did not complete the definition of *ill-gotten wealth*. The further requirement was

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[92] G.R. No. 130716, December 9, 1998, 299 SCRA 744, 768-769.

that the assets and property should have been amassed by former President Marcos, his immediate family, relatives, and close associates both here and abroad. In this regard, identifying former President Marcos, his immediate family, and relatives was not difficult, but identifying other persons who *might be* the *close associates* of former President Marcos presented an *inherent difficulty,* because it was not fair and just to include within the term *close associates* everyone who had had any association with President Marcos, his immediate family, and relatives.

Again, through several rulings, the Court became the arbiter to determine who were the close associates within the coverage of E.O. No. 1.

In *Republic v. Migriño*,[93] the Court held that respondents Migriño, *et al.* were not necessarily among the persons covered by the term *close subordinate* or *close associate* of former President Marcos by reason alone of their having served as government officials or employees during the Marcos administration, *viz*:

> **It does not suffice, as in this case, that the respondent is or was a government official or employee during the administration of former Pres. Marcos. There must be a *prima facie* showing that the respondent unlawfully accumulated wealth by virtue of his close association or relation with former Pres. Marcos and/or his wife**. This is so because otherwise the respondent's case will fall under existing general laws and procedures on the matter. x x x

In *Cruz, Jr. v. Sandiganbayan*,[94] the Court declared that the petitioner was not a *close associate* as the term was used in E.O. No. 1 just because he had served as the President and General Manager of the GSIS during the Marcos administration.

In *Republic v. Sandiganbayan,*[95] the Court stated that respondent Maj. Gen. Josephus Q. Ramas' having been a

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[93] G.R. No. 89483, August 30, 1990, 189 SCRA 289.

[94] G.R. No. 94595, February 26, 1991, 194 SCRA 474.

[95] G.R. No. 104768, July 21, 2003, 407 SCRA 10.

Commanding General of the Philippine Army during the Marcos administration "d[id] not automatically make him a subordinate of former President Ferdinand Marcos as this term is used in Executive Order Nos. 1, 2, 14 and 14-A absent a showing that he enjoyed close association with former President Marcos."

It is well to point out, consequently, that the distinction laid down by E.O. No. 1 and its related issuances, and expounded by relevant judicial pronouncements unavoidably required *competent evidentiary substantiation* made in *appropriate judicial proceedings* to determine: (*a*) whether the assets or properties involved had come from the vast resources of government, and (*b*) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The requirement of *competent evidentiary substantiation* made in *appropriate judicial proceedings* was imposed because the factual premises for the reconveyance of the assets or properties in favor of the government due to their being ill-gotten wealth could not be simply assumed. Indeed, in *BASECO*,[96] the Court made this clear enough by emphatically observing:

6. *Government's Right and Duty to Recover All Ill-gotten Wealth*

There can be no debate about the validity and eminent propriety of the Government's plan "to recover all ill-gotten wealth."

Neither can there be any debate about the proposition that assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.

But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise which are deemed pillars of a free society such as ours,

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[96] *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government, supra,* note 89, pp. 206-208.

and to which all members of that society may without exception lay claim.

xxx Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. *Along with these freedoms are included economic freedom and freedom of enterprise* within reasonable bounds and under proper control. xxx Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. *Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution*. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country.

a. Need of Evidentiary Substantiation in Proper Suit

Consequently, **the factual premises of the Executive Orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated;** although there are some who maintain that the fact — that an immense fortune, and "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad," and they have resorted to all sorts of clever schemes and manipulations to disguise and hide their illicit acquisitions — is within the realm of judicial notice, being of so extensive notoriety as to dispense with proof thereof. **Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in Executive Order No. 14.** [97]

Accordingly, the Republic should furnish to the Sandiganbayan in proper judicial proceedings the competent evidence proving who were the close associates of President Marcos who had amassed assets and properties that would be rightly considered as *ill-gotten wealth.*

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[97] Bold emphasis supplied.

III.
Summary Judgment was not warranted; The Republic should have adduced evidence to substantiate its allegations against the Respondents

We affirm the decision of November 28, 2007, because the Republic did not discharge its burden as the plaintiff to establish by preponderance of evidence that the respondents' SMC shares were illegally acquired with coconut-levy funds.

The decision of November 28, 2007 fully explained why the Sandiganbayan dismissed the Republic's case against Cojuangco, *et al.*, *viz*:

Going over the evidence, especially the laws, *i.e.*, P.D. No. 961, P.D. No. 755, and P.D. No. 1468, over which plaintiff prayed that Court to take judicial notice of, it is worth noting that these same laws were cited by plaintiff when it filed its motion for judgment on the pleadings and/or summary judgment regarding the CIIF block of SMC shares of stock. Thus, the Court has already passed upon the same laws when it arrived at judgment determining ownership of the CIIF block of SMC shares of stock. Pertinently, in the Partial Summary Judgment promulgated on May 7, 2004, the Court gave the following rulings finding certain provisions of the above-cited laws to be constitutionally infirmed, thus:

> In this case, Section 2(d) and Section 9 and 10, Article III, of P.D. Nos. 961 and 1468 mandated the UCPB to utilize the CIIF, an accumulation of a portion of the CCSF and the CIDF, for investment in the form of shares of stock *in corporations organized for the purpose of engaging in the establishment and the operation of industries and commercial activities and other allied business undertakings* relating to coconut and other palm oils industry in all aspects. The investments made by UCPB in CIIF companies are required by the said Decrees to be equitably distributed for free by the said bank to the coconut farmers (Sec. 10, P.D. No. 961 and Sec. 10, P.D. No. 1468). The public purpose sought to be served by the free distribution of the shares of stock acquired with the use of public funds is not evident in the laws mentioned. More specifically, it is not clear how private ownership of the shares

of stock acquired with public funds can serve a public purpose. The mode of distribution of the shares of stock also left much room for the diversion of assets acquired through public funds into private uses or to serve directly private interests, contrary to the Constitution. In the said distribution, defendants COCOFED, *et al*. and Ballares, *et al*. admitted that UCPB followed the administrative issuances of PCA which we found to be constitutionally objectionable in our Partial Summary Judgment in Civil Case No. 0033-A, the pertinent portions of which are quoted hereunder:

x x x x x x x x x.

The distribution for free of the shares of stock of the CIIF Companies is tainted with the above-mentioned constitutional infirmities of the PCA administrative issuances. In view of the foregoing, we cannot consider the provision of P.D. No. 961 and P.D. No. 1468 and the implementing regulations issued by the PCA as valid legal basis to hold that assets acquired with public funds have legitimately become private properties.

The CIIF Companies having been acquired with public funds, the 14 CIIF-owned Holding Companies and all their assets, including the CIIF Block of SMC Shares, being public in character, belong to the government. Even granting that the 14 Holding Companies acquired the SMC Shares through CIIF advances and UCPB loans, said advances and loans are still the obligations of the said companies. The incorporating equity or capital of the 14 Holding Companies, which were allegedly used also for the acquisition of the subject SMC shares, being wholly owned by the CIIF Companies, likewise form part of the coconut levy funds, and thus belong to the government in trust for the ultimate beneficiaries thereof, which are all the coconut farmers.

x x x x x x x x x.

And, with the above-findings of the Court, the CIIF block of SMC shares were subsequently declared to be of public character and should be reconveyed to the government in trust for coconut farmers. The foregoing findings notwithstanding, a question now arises on whether the same laws can likewise serve as ultimate basis for a finding that the Cojuangco, *et al*. block of SMC shares are also imbued with public character and should rightfully be reconveyed to the government.

On this point, the Court disagrees with plaintiff that reliance on said laws would suffice to prove that defendants Cojuangco, *et al*.'s acquisition of SMC shares of stock was illegal as public funds were used. For one, plaintiff's reliance thereon has always had reference only to the CIIF block of shares, and the Court has already settled the same by going over the laws and quoting related findings in the Partial Summary judgment rendered in Civil Case No. 0033-A. For another, the allegations of plaintiff pertaining to the Cojuangco block representing twenty percent (20%) of the outstanding capital stock of SMC stress defendant Cojuangco's acquisition by virtue of his positions as Chief Executive Officer of UCPB, a member-director of the Philippine Coconut Authority (PCA) Governing Board, and a director of the CIIF Oil Mills. Thus, reference to the said laws would not settle whether there was abuse on the part of defendants Cojuangco, *et al*. of their positions to acquire the SMC shares.[98]

Besides, in the Resolution of the Court on plaintiff's Motion for Partial Summary Judgment (Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendants Eduardo M. Cojuangco, Jr. and the defendant Cojuangco Companies), the Court already rejected plaintiff's reference to said laws. In fact, the Court declined to grant plaintiff's motion for partial summary judgment because it simply contended that defendant Cojuangco's statements in his pleadings, which plaintiff again offered in evidence herein, regarding the presentation of a possible CIIF witness as well as UCPB records can already be considered admissions of defendants' exclusive use and misuse of coconut levy funds. In the said resolution, the Court already reminded plaintiff that the issues cannot be resolved by plaintiff's interpretation of defendant Cojuangco's statements in his brief. Thus, the substantial portion of the Resolution of the Court denying plaintiff's motion for partial summary judgment is again quoted for emphasis: [99]

> We cannot agree with the plaintiff's contention that the defendant's statements in his Pre-Trial Brief regarding the presentation of a possible CIIF witness as well as UCPB records, can already be considered as admissions of the defendant's

[98] Bold emphasis supplied.

[99] Bold emphasis supplied.

exclusive use and misuse of coconut levy funds to acquire the subject SMC shares and defendant Cojuangco's alleged taking advantage of his positions to acquire the subject SMC shares. Moreover, in ruling on a motion for summary judgment, the court "should take that view of the evidence most favorable to the party against whom it is directed, giving such party the benefit of all favorable inferences." ***Inasmuch as this issue cannot be resolved merely from an interpretation of the defendant's statements in his brief, the UCPB records must be produced and the CIIF witness must be heard to ensure that the conclusions that will be derived have factual basis and are thus, valid.***[100]

WHEREFORE, in view of the foregoing, the Motion for Partial Summary Judgment dated July 11, 2003 is hereby DENIED for lack of merit.

SO ORDERED.

(Emphasis supplied)

Even assuming that, as plaintiff prayed for, the Court takes judicial notice of the evidence it offered with respect to the Cojuangco block of SMC shares of stock, as contained in plaintiff's manifestation of purposes, still its evidence do not suffice to prove the material allegations in the complaint that Cojuangco took advantage of his positions in UCPB and PCA in order to acquire the said shares. As above-quoted, the Court, itself, has already ruled, and hereby stress that "UCPB records must be produced and the CIIF witness must be heard to ensure that the conclusions that will be derived have factual basis and are thus, valid." Besides, the Court found that there are genuine factual issues raised by defendants that need to be threshed out in a full-blown trial, and which plaintiff had the burden to substantially prove. Thus, the Court outlined these genuine factual issues as follows:

1) What are the "various sources" of funds, which defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?

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[100] Bold emphasis is in the original.

2) Whether or not such funds acquired from alleged "various sources" can be considered coconut levy funds;

3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PCA, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;

4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?[101]

Answers to these issues **are not evident from the submissions of plaintiff and *must therefore be proven through the presentation of relevant and competent evidence during trial.*** A perusal of the subject Motion shows that the plaintiff **hastily derived conclusions from the defendants' statements in their previous pleadings although such conclusions were not supported by categorical facts *but only mere inferences.*** xxx xxx xxx. (Emphasis supplied)[102]

Despite the foregoing pronouncement of the Court, plaintiff did not present any other evidence during the trial of this case but instead made its manifestation of purposes, that later served as its offer of evidence in the instant case, that merely used the same evidence it had already relied upon when it moved for partial summary judgment over the Cojuangco block of SMC shares. Altogether, the Court finds the same insufficient to prove plaintiff's allegations in the complaint because more than judicial notices, the factual issues require the presentation of admissible, competent and relevant evidence in accordance with Sections 3 and 4, Rule 128 of the Rules on Evidence.

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[101] Bold emphasis is in the original.

[102] Bold emphasis supplied.

Moreover, the propriety of taking judicial notice of plaintiff's exhibits is aptly questioned by defendants Cojuangco, *et al*. Certainly, the Court can take judicial notice of laws pertaining to the coconut levy funds as well as decisions of the Supreme Court relative thereto, but taking judicial notice does not mean that the Court would accord full probative value to these exhibits. Judicial notice is based upon convenience and expediency for it would certainly be superfluous, inconvenient, and expensive both to parties and the court to require proof, in the ordinary way, of facts which are already known to courts. However, **a court cannot take judicial notice of a factual matter in controversy. Certainly, there are genuine factual matters in the instant case, as above-cited, which plaintiff ought to have proven with relevant and competent evidence other than the exhibits it offered**.

Referring to plaintiff's causes of action against defendants Cojuangco, *et al*., **the Court finds its evidence insufficient to prove that the source of funds used to purchase SMC shares indeed came from coconut levy funds**. In fact, there is no direct link that the loans obtained by defendant Cojuangco, Jr. were the same money used to pay for the SMC shares. The scheme alleged to have been taken by defendant Cojuangco, Jr. was not even established by any paper trail or testimonial evidence that would have identified the same. On account of his positions in the UCPB, PCA and the CIIF Oil Mills, the Court cannot conclude that he violated the fiduciary obligations of the positions he held in the absence of proof that he was so actuated and that he abused his positions.[103]

It was plain, indeed, that Cojuangco, *et al.* had tendered genuine issues through their responsive pleadings and did not admit that the acquisition of the Cojuangco block of SMC shares had been illegal, or had been made with public funds. As a result, the Republic needed to establish its allegations with preponderant competent evidence, because, as earlier stated, the fact that property was ill gotten could not be presumed but must be substantiated with competent proof adduced in proper judicial proceedings. That the Republic opted not to adduce competent evidence thereon despite stern reminders and warnings

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[103] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, pp. 505-509.

from the Sandiganbayan to do so revealed that the Republic did not have the competent evidence to prove its allegations against Cojuangco, *et al.*

Still, the Republic, relying on the 2001 holding in *Republic v. COCOFED*,[104] pleads in its petition for review (G.R. No. 180702) that:

With all due respect, the Honorable Sandiganbayan failed to consider legal precepts and procedural principles *vis-à-vis* the records of the case showing that the funds or "various loans" or "advances" used in the acquisition of the disputed SMC Shares ultimately came from the coconut levy funds.

As discussed hereunder, respondents' own admissions in their Answers and Pre-Trial Briefs confirm that the "various sources" of funds utilized in the acquisition of the disputed SMC shares came from "borrowings" and "advances" from the UCPB and the CIIF Oil Mills.[105]

Thereby, the Republic would have the Sandiganbayan pronounce the block of SMC shares of stock acquired by Cojuangco, *et al.* as *ill-gotten wealth* even without the Republic first presenting preponderant evidence establishing that such block had been acquired illegally and with the use of coconut levy funds.

The Court cannot heed the Republic's pleas for the following reasons:

To begin with, it is notable that the decision of November 28, 2007 *did not rule* on whether coconut levy funds were public funds or not. The silence of the Sandiganbayan on the matter was probably due to its not seeing the need for such ruling following its conclusion that the Republic had not preponderantly established the *source* of the funds used to pay the purchase price of the concerned SMC shares, and whether the shares had been acquired with the use of coconut levy funds.

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[104] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

[105] *Rollo* (G.R. No. 180702), Vol. 2, pp. 427-428.

Secondly, the ruling in *Republic v. COCOFED*[106] determined only whether certain stockholders of the UCPB could vote in the stockholders' meeting that had been called. The issue now before the Court could not be controlled by the ruling in *Republic v. COCOFED,* however, for even as that ruling determined the issue of voting, the Court was forthright enough about not thereby preempting the Sandiganbayan's decisions *on the merits* on *ill-gotten wealth* in the several cases then pending, including this one, *viz*:

In making this ruling, we are in no way preempting the proceedings the Sandiganbayan may conduct or the final judgment it may promulgate in Civil Case No. 0033-A, 0033-B and 0033-F. Our determination here is merely *prima facie*, and should not bar the anti-graft court from making a final ruling, after proper trial and hearing, on the issues and prayers in the said civil cases, particularly in reference to the ownership of the subject shares.

We also lay down the caveat that, in declaring the coco levy funds to be *prima facie* public in character, we are not ruling in any final manner on their classification — whether they are general or trust or special funds — since such classification is not at issue here. Suffice it to say that the public nature of the coco levy funds is decreed by the Court only for the purpose of determining the right to vote the shares, pending the final outcome of the said civil cases.

Neither are we resolving in the present case the question of whether the shares held by Respondent Cojuangco are, as he claims, the result of private enterprise. This factual matter should also be taken up in the final decision in the cited cases that are pending in the court *a quo*. Again, suffice it to say that the only issue settled here is the right of PCGG to vote the sequestered shares, pending the final outcome of said cases.

Thirdly, the Republic's assertion that coconut levy funds had been used to source the payment for the Cojuangco block of SMC shares was premised on its allegation that the UCPB and the CIIF Oil Mills were public corporations. But the premise was grossly erroneous and overly presumptuous, because:

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[106] *Supra*, note 104.

(*a*) The fact of the UCPB and the CIIF Oil Mills being public corporations or government-owned or government-controlled corporations precisely remained *controverted* by Cojuangco, *et al.* in light of the lack of any competent *to that effect* being in the records;

(*b*) Cojuangco explicitly averred in paragraph 2.01.(*b*) of his *Answer* that the UCPB was a "private corporation"; and

(*c*) The Republic did not competently identify or establish which ones of the Cojuangco corporations had supposedly received advances from the CIIF Oil Mills.

Fourthly, the Republic asserts that the contested block of shares had been paid for with "borrowings" from the UCPB and "advances" from the CIIF Oil Mills, and that such borrowings and advances had been illegal because the shares had not been purchased for the "benefit of the Coconut Farmers." To buttress its assertion, the Republic relied on the admissions supposedly made in paragraph 2.01 of Cojuangco's *Answer* in relation to paragraph 4 of the Republic's *Amended Complaint*.

The best way to know what paragraph 2.01 of Cojuangco's *Answer* admitted is to refer to both paragraph 4 of the *Amended Complaint* and paragraph 2.01 of his *Answer,* which are hereunder quoted:

Paragraph 4 of the *Amended Complaint*

4. Defendant EDUARDO M. COJUANGCO, JR., was Governor of Tarlac, Congressman of then First District of Tarlac and Ambassador-at-Large in the Marcos Administration. He was commissioned Lieutenant Colonel in the Philippine Air Force, Reserve. Defendant Eduardo M. Cojuangco, Jr., otherwise known as the "Coconut King" was head of the coconut monopoly which was instituted by Defendant Ferdinand E. Marcos, by virtue of the Presidential Decrees. Defendant Eduardo E. Cojuangco, Jr., who was also one of the closest associates of the Defendant Ferdinand E. Marcos, held the positions of Director of the Philippine Coconut Authority, the United Coconut Mills, Inc., President and Board Director of the United Coconut Planters Bank, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc. He was also the Chairman of the Board and Chief Executive

Officer and the controlling stockholder of the San Miguel Corporation. He may be served summons at 45 Balete Drive, Quezon City or at 136 East 9th Street, Quezon City.

Paragraph 2.01 of Respondent Cojuangco's *Answer*

2.01. Herein defendant admits paragraph 4 only insofar as it alleges the following:

> (a) That herein defendant has held the following positions in government: Governor of Tarlac, Congressman of the then First District of Tarlac, Ambassador-at-Large, Lieutenant Colonel in the Philippine Air Force and Director of the Philippines Coconut Authority;
>
> (b) That he held the following positions in private corporations: Member of the Board of Directors of the United Coconut Oil Mills, Inc.; President and member of the Board of Directors of the United Coconut Planters Bank, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc.; Chairman of the Board and Chief Executive of San Miguel Corporation; and
>
> (c) That he may be served with summons at 136 East 9th Street, Quezon City.

Herein defendant specifically denies the rest of the allegations of paragraph 4, including any insinuation that whatever association he may have had with the late Ferdinand Marcos or Imelda Marcos has been in connection with any of the acts or transactions alleged in the complaint or for any unlawful purpose.

It is basic in remedial law that a defendant in a civil case must apprise the trial court and the adverse party of the facts alleged by the complaint that he admits and of the facts alleged by the complaint that he wishes to place into contention. The defendant does the former either by stating in his answer that they are true or by failing to properly deny them. There are two ways of denying alleged facts: one is by general denial, and the other, by specific denial.[107]

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[107] Friedenthal, *et al.*, *Civil Procedure*, 2nd Edition, §§5.18 and 5.19.

In this jurisdiction, only a specific denial shall be sufficient to place into contention an alleged fact.[108] Under Section 10,[109] Rule 8 of the *Rules of Court*, a specific denial of an allegation of the complaint may be made in any of three ways, namely: (*a*) a defendant specifies each material allegation of fact the truth of which he does not admit and, whenever practicable, sets forth the substance of the matters upon which he relies to support his denial; (*b*) a defendant who desires to deny only a part of an averment specifies so much of it as is true and material and denies only the remainder; and (*c*) a defendant who is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint states so, which has the effect of a denial.

The express qualifications contained in paragraph 2.01 of Cojuangco's *Answer* constituted efficient specific denials of the averments of paragraph 2 of the Republic's *Amended Complaint* under the first method mentioned in Section 10 of Rule 8, *supra*. Indeed, the aforequoted paragraphs of the *Amended Complaint* and of Cojuangco's *Answer* indicate that Cojuangco thereby *expressly qualified* his admission of having been the President and a Director of the UCPB with the averment that the UCPB was a "private corporation"; that his *Answer*'s allegation of his being a member of the Board of Directors of the United Coconut Oil Mills, Inc. did not admit that he was a member of the Board of Directors of the CIIF Oil Mills, because the United Coconut

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[108] Section 11, Rule 8, *Rules of Court*, provides:

Section 11. Allegations not specifically denied deemed admitted. — Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath. (1a,R9).

[109] Section 10. *Specific denial*. — A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. (10a)

Oil Mills, Inc. was not one of the CIIF Oil Mills; and that his *Answer* nowhere contained any admission or statement that he had held the various positions in the government or in the private corporations at the same time *and* in 1983, the time when the contested acquisition of the SMC shares of stock took place.

What the Court stated in *Bitong v. Court of Appeals (Fifth Division)*[110] as to admissions is illuminating:

When taken in its totality, the *Amended Answer to the Amended Petition,* or even the *Answer to the Amended Petition* alone, clearly raises an issue as to the legal personality of petitioner to file the complaint. **Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side.** The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest.

In other words, **while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit.** Although acts or facts admitted do not require proof and cannot be contradicted, however, evidence *aliunde* can be presented to show that the admission was made through palpable mistake. **The rule is always in favor of liberality in construction of pleadings so that the real matter in dispute may be submitted to the judgment of the court.**

And, lastly, the Republic cites the following portions of the joint Pre-Trial Brief of Cojuangco, *et al.*,[111] to wit:

IV.
PROPOSED EVIDENCE

x x x x x x x x x

4.01. xxx Assuming, however, that plaintiff presents evidence to support its principal contentions, defendant's evidence in rebuttal

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[110] G.R. No. 123553, July 13, 1998, 292 SCRA 503, 520.

[111] Petition, pp. 40-41; *rollo* (G.R. No. 180702), Vol. 2, pp. 435-436.

would include testimonial and documentary evidence showing: a) the ownership of the shares of stock prior to their acquisition by respondents (listed in Annexes 'A" and 'B"); b) the consideration for the acquisition of the shares of stock by the persons or companies in whose names the shares of stock are now registered; and c) **the source of the funds used to pay the purchase price.**

4.02. **Herein respondents intend to present the following evidence:**

x x x x x x x x x

b. Proposed Exhibits ____, ____, ____

Records of the United Coconut Planters Bank which would show borrowings of the companies listed in Annexes "A" and "B", or companies affiliated or associated with them, which were used to source payment of the shares of stock of the San Miguel Corporation subject of this case.

4.03. Witnesses.

x x x x x x x x x

(b) **A representative of the United Coconut Planters Bank who will testify in regard the loans which were used to source the payment of the price of SMC shares of stock.**

(c) **A representative from the CIIF Oil Mills who will testify in regard the loans or credit advances which were used to source the payment of the purchase price of the SMC shares of stock**.

The Republic insists that the aforequoted portions of the joint Pre-Trial Brief were Cojuangco, *et al*.'s admission that:

(*a*) Cojuangco had received money from the UCPB, a bank entrusted by law with the administration of the coconut levy funds; and

(*b*) Cojuangco had received more money from the CIIF Oil Mills in which part of the CIIF funds had been placed, and thereby used the funds of the UCPB and the CIIF as capital to buy *his* SMC shares.[112]

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[112] *Id.*, p. 436.

We disagree with the Republic's posture.

The statements found in the joint Pre-Trial Brief of Cojuangco, *et al*. were noticeably written beneath the heading of *Proposed Evidence*. Such location indicated that the statements were only being *proposed*, that is, they were *not yet* intended or offered as admission of any fact stated therein. In other words, the matters stated or set forth therein might *or* might not be presented at all. Also, the text and tenor of the statements *expressly conditioned* the proposal on the Republic ultimately presenting its evidence in the action. After the Republic opted not to present its evidence, the condition did not transpire; hence, the proposed admissions, assuming that they were that, did not materialize.

Obviously, too, the statements found under the heading of *Proposed Evidence* in the joint Pre-Trial Brief were incomplete and inadequate on the important details of the *supposed* transactions (*i.e*., alleged borrowings and advances). As such, they could not constitute admissions that the funds had come from borrowings by Cojuangco, *et al.* from the UCPB or had been credit advances from the CIIF Oil Companies. Moreover, the purpose for presenting the records of the UCPB and the representatives of the UCPB and of the still unidentified or unnamed CIIF Oil Mills as declared in the joint Pre-Trial Brief did not at all show whether the UCPB and/or the unidentified or unnamed CIIF Oil Mills were the *only* sources of funding, or that such institutions, assuming them to be the sources of the funding, had been the *only* sources of funding. Such ambiguousness disqualified the statements from being relied upon as admissions. It is fundamental that any statement, to be considered as an admission for purposes of judicial proceedings, should be *definite*, *certain* and *unequivocal*;[113] otherwise, the disputed fact will not get settled.

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[113] *CMS Logging, Inc. v. Court of Appeals,* G.R. No. L-41420, July 10, 1992, 211 SCRA 374, 380-381; citing *Bank of the Philippine Islands v. Fidelity & Surety Co*., 51 Phil. 57, 64 ('a statement is not competent as an admission where it does not, under a reasonable construction, appear to admit or acknowledge the fact which is sought to be proved by it.' An admission or declaration to be competent must have been expressed in definite, certain and unequivocal language."

Another reason for rejecting the Republic's posture is that the Sandiganbayan, as the trial court, was in no position to *second-guess* what the non-presented records of the UCPB *would* show as the borrowings made by the corporations listed in Annexes A and B, or by the companies affiliated or associated with them, that "were used to source payment of the shares of stock of the San Miguel Corporation subject of this case," or what the representative of the UCPB or the representative of the CIIF Oil Mills would testify about loans or credit advances used to source the payment of the price of SMC shares of stock.

Lastly, the *Rules of Court* has no rule that treats the statements found under the heading *Proposed Evidence* as admissions binding Cojuangco, *et al.* On the contrary, the *Rules of Court* has even distinguished between *admitted facts* and *facts proposed to be admitted* during the stage of pre-trial. Section 6 (b),[114] Rule 18 of the *Rules of Court,* requires a Pre-Trial Brief to include a *summary of admitted facts* and a *proposed stipulation of facts.* Complying with the requirement, the joint Pre-Trial Brief of Cojuangco, *et al.* included the *summary of admitted facts* in its paragraph 3.00 of its Item III, separately and distinctly from the *Proposed Evidence*, to wit:

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[114] Section 6. *Pre-trial brief.* — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

(b) A summary of admitted facts and proposed stipulation of facts;

(c) The issues to be tried or resolved;

(d) The documents or exhibits to be presented, stating the purpose thereof;

(e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and

(f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (n)

III.
SUMMARY OF UNDISPUTED FACTS

3.00. Based on the complaint and the answer, the acquisition of the San Miguel shares by, and their registration in the names of, the companies listed in Annexes "A" and "B" may be deemed undisputed.

3.01. **All other allegations in the complaint are disputed**.[115]

The burden of proof, according to Section 1, Rule 131 of the *Rules of Court*, is "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." Here, the Republic, being the plaintiff, was the party that carried the burden of proof. That burden required it to demonstrate through competent evidence that the respondents, as defendants, had purchased the SMC shares of stock with the use of public funds; and that the affected shares of stock constituted *ill-gotten wealth*. The Republic was well apprised of its burden of proof, first through the joinder of issues made by the responsive pleadings of the defendants, including Cojuangco, *et al*. The Republic was further reminded through the pre-trial order and the Resolution denying its *Motion for Summary Judgment, supra,* of the duty to prove the factual allegations on ill-gotten wealth against Cojuangco, *et al*., specifically the following disputed matters:

(*a*) When the loans or advances were incurred;

(*b*) The amount of the loans from the UCPB and of the credit advances from the CIIF Oil Mills, including the specific CIIF Oil Mills involved;

(*c*) The identities of the borrowers, that is, all of the respondent corporations together, or separately; and the amounts of the borrowings;

(*d*) The conditions attendant to the loans or advances, if any;

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[115] *Rollo* (G.R. No. 180702), Vol. 2, p. 634 (*Pre-Trial Brief (Re: Acquisition of San Miguel Corporation [SMC])* filed by Cojuangco, *et al.*, p. 9).

(*e*) The manner, form, and time of the payments made to Zobel or to the Ayala Group, whether by check, letter of credit, or some other form; and

(*f*) Whether the loans were paid, and whether the advances were liquidated.

With the Republic nonetheless choosing not to adduce evidence proving the factual allegations, particularly the aforementioned matters, and instead opting to pursue its claims by *Motion for Summary Judgment*, the Sandiganbayan became completely deprived of the means to know the necessary but crucial details of the transactions on the acquisition of the contested block of shares. The Republic's failure to adduce evidence shifted no burden to the respondents to establish anything, for it was basic that the party who asserts, not the party who denies, must prove.[116] Indeed, in a civil action, the plaintiff has the burden of pleading every essential fact and element of the cause of action and proving them by preponderance of evidence. This means that if the defendant merely denies each of the plaintiff's allegations and neither side produces evidence on any such element, the plaintiff must necessarily fail in the action.[117] Thus, the Sandiganbayan correctly dismissed Civil Case No. 0033-F for failure of the Republic to prove its case by preponderant evidence.

A summary judgment under Rule 35 of the *Rules of Court* is a procedural technique that is proper only when there is no

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[116] *Martin v. Court of Appeals*, 205 SCRA 591, 596 [1995]; *Luxuria Homes, Inc. v. Court of Appeals*, 302 SCRA 315 [1999].

[117] I Jones on Evidence, (1992) §3.12; see also *Vitarich Corporation v. Losin*, G.R. No. 181560, November 15, 2010; *Hyatt Elevators and Escalators Corp. v. Cathedral Heights Building Complex Association, Inc.*, G.R. No. 173881, December 1, 2010; *Reyes v. Century Canning Corporation,* G.R. No. 165377, February 16, 2010 (It is a basic rule in evidence that each party to a case must prove his own affirmative allegations by the degree of evidence required by law. In civil cases, the party having the burden of proof must establish his case by preponderance of evidence, or that evidence that is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other.)

genuine issue as to the existence of a material fact and the moving party is entitled to a judgment as a matter of law.[118] It is a method intended to expedite or promptly dispose of cases where the facts appear *undisputed* and *certain* from the pleadings, depositions, admissions, and affidavits on record.[119] Upon a motion for summary judgment the court's sole function is to determine whether there is an issue of fact to be tried, and all doubts as to the existence of an issue of fact must be resolved *against* the moving party. In other words, a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and any doubt as to the existence of such an issue is resolved against the movant. Thus, in ruling on a motion for summary judgment, the court should take that view of the evidence most favorable to the party against whom it is directed, giving that party the benefit of all favorable inferences.[120]

The term *genuine issue* has been defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith, and patently unsubstantial so as not to constitute a genuine issue for trial. The court can determine this on the basis of the pleadings, admissions, documents, affidavits, and counter-affidavits submitted by the parties to the court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.[121]

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[118] Section 3, Rule 35, *Rules of Court*; see *Excelsa Industries, Inc. v. Court of Appeals,* G.R. No. 105455, August 23, 1995, 247 SCRA 560, 566; *Solid Manila Corporation v. Bio Hong Trading Co., Inc.*, G.R. No. 90596, April 8, 1991, 195 SCRA 748, 756; *Arradaza v. Court of Appeals*, G.R. No. 50422, February 8, 1989, 170 SCRA 12; *De Leon v. Faustino*, 110 Phil. 249.

[119] *Viajar v. Estenzo*, G.R. No. L-45321, April 30, 1979, 89 SCRA 685, 696; *Bayang v. Court of Appeals*, G.R. No. 53564, February 27, 1987, 148 SCRA 91, 94.

[120] *Gatchalian v. Pavilin,* G.R. No. L-17619, October 31, 1962, 6 SCRA 508, 512.

[121] *Paz v. Court of Appeals*, G.R. No. 85332, January 11, 1990, 181 SCRA 26, 30; *Garcia v. Court of Appeals*, G.R. Nos. 82282-83, November

Well-settled is the rule that a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact.[122] Upon that party's shoulders rests the burden to prove the cause of action, and to show that the defense is interposed solely for the purpose of delay. After the burden has been discharged, the defendant has the burden to show facts sufficient to entitle him to defend.[123] Any doubt as to the propriety of a summary judgment shall be resolved against the moving party.

We need not stress that the trial courts have limited authority to render summary judgments and may do so only in cases where no genuine issue as to any material fact clearly exists between the parties. The rule on summary judgment does not invest the trial courts with jurisdiction to try summarily the factual issues upon affidavits, but authorizes summary judgment only when it appears clear that there is no genuine issue as to any material fact.[124]

IV.
Republic's burden to establish by preponderance of evidence that respondents' SMC shares had been illegally acquired with coconut-levy funds was not discharged

Madame Justice Carpio Morales argues in her dissent that although the contested SMC shares could be inescapably treated

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24, 1988, 167 SCRA 815; *Cadirao v. Estenzo*, G.R. No. L-42408, September 21, 1984, 132 SCRA 93, 100; *Vergara, Sr. v. Suelto*, G.R. No. 74766, December 21, 1987, 156 SCRA 753; *Philippine National Bank v. Noah's Ark Sugar Refinery*, G.R. No. 107243, September 1, 1993, 226 SCRA 36, 42.

[122] *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc.*, G.R. No. 145469, May 28, 2004, 430 SCRA 227; *Viajar v. Estenzo, supra*; *Paz v. Court of Appeals, supra.*

[123] *Estrada v. Consolacion*, G.R. No. L-40948, June 29, 1976, 71 SCRA 523, 529.

[124] *Archipelago Builders v. Intermediate Appellate Court*, G.R. No. 75282, February 19, 1991, 194 SCRA 207, 210; *Viajar v. Estenzo, supra; Paz v. Court of Appeals, supra*.

as fruits of funds that are *prima facie* public in character, Cojuangco, *et al.* abstained from presenting countervailing evidence; and that with the Republic having shown that the SMC shares came into fruition from coco levy funds that are *prima facie* public funds, Cojuangco, *et al.* had to go forward with contradicting evidence, but did not.

The Court disagrees. We cannot reverse the decision of November 28, 2007 on the basis alone of judicial pronouncements to the effect that the coconut levy funds were *prima facie* public funds,[125] but without any competent evidence linking the acquisition of the block of SMC shares by Cojuangco, *et al.* to the coconut levy funds.

V.
No violation of the DOSRI and Single Borrower's Limit restrictions

The Republic's lack of proof on the source of the funds by which Cojuangco, *et al.* had acquired their block of SMC shares has made it shift its position, that it now suggests that Cojuangco had been enabled to obtain the loans by the issuance of LOI 926 exempting the UCPB from the DOSRI and the Single Borrower's Limit restrictions.

We reject the Republic's suggestion.

Firstly, as earlier pointed out, the Republic adduced no evidence on the significant particulars of the supposed loan, like the amount, the actual borrower, the approving official, *etc*. It did not also establish whether or not the loans were DOSRI[126] or issued in

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[125] *Id.*, citing *Republic v. COCOFED*, *supra,* note 111; and *Republic v. Sandiganbayan* (*First Division*), G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[126] DOSRI is the acronym derived from the first letters of the words Directors, Officers, Stockholders and their Related Interests. The DOSRI restriction is designed to prevent undue advantage to be granted to such bank officers and their related interests in the grant of bank loans, credit accommodations, and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests; and limits the outstanding loans, credit accommodations, and guarantees that

violation of the Single Borrower's Limit. Secondly, the Republic could not outrightly assume that President Marcos had issued LOI 926 for the purpose of allowing the loans by the UCPB in favor of Cojuangco. There must be competent evidence to that effect. And, finally, the loans, assuming that they were of a DOSRI nature or without the benefit of the required approvals or in excess of the Single Borrower's Limit, would not be void for that reason. Instead, the bank or the officers responsible for the approval and grant of the DOSRI loan would be subject only to sanctions under the law.[127]

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a bank may extend to each of its stockholders, directors, or officers and their related interest to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contributions in the bank.

The applicable DOSRI provision was Section 83 of Republic Act No. 337 (*General Banking Law*), as amended by P.D. No. 1795, to wit:

> Section 83. No director or officer of any banking institution shall, either directly or indirectly, for himself or as the representative or agent of other, borrow any of the deposits of funds of such banks, nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for money borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.
>
> The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers, or stockholders. However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two percent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank: Provided, however, That loans and advances to officers in the form of fringe benefits granted in accordance with rules and regulations as may be prescribed by the Monetary Board shall not be subject to the preceding limitation.

[127] *E.g.*, Section 66, Republic Act No. 8791 (*General Banking Law of 2000)*, *viz*:

VI.

Cojuangco violated no fiduciary duties

The Republic invokes the following pertinent statutory provisions of the *Civil Code*, to wit:

Article 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

Article 1456. If property is acquired through mistake or fraud, the person obtaining it is by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

and the *Corporation Code*, as follows:

Section 31. *Liability of directors, trustees or officers.*—Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

Section 66. *Penalty for Violations of this Act.* — Unless otherwise herein provided, the violation of any of the provisions of this Act shall be subject to Sections 34, 35, 36 and 37 of the New Central Bank Act. If the offender is a director or officer of a bank, quasi-bank or trust entity, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by *quo warranto* proceedings instituted by the Solicitor General.

Did Cojuangco breach his "fiduciary duties" as an officer and member of the Board of Directors of the UCPB? Did his acquisition and holding of the contested SMC shares come under a constructive trust in favor of the Republic?

The answers to these queries are in the negative.

The conditions for the application of Articles 1455 and 1456 of the *Civil Code* (like the trustee using trust funds to purchase, or a person acquiring property through mistake or fraud), and Section 31 of the *Corporation Code* (like a director or trustee willfully and knowingly voting for or assenting to patently unlawful acts of the corporation, among others) require factual foundations to be first laid out in appropriate judicial proceedings. Hence, concluding that Cojuangco breached fiduciary duties as an officer and member of the Board of Directors of the UCPB *without competent evidence thereon* would be unwarranted and unreasonable.

Thus, the Sandiganbayan could not fairly find that Cojuangco had committed breach of any fiduciary duties as an officer and member of the Board of Directors of the UCPB. For one, the *Amended Complaint* contained no clear factual allegation on which to predicate the application of Articles 1455 and 1456 of the *Civil Code*, and Section 31 of the *Corporation Code*. Although the trust relationship supposedly arose from Cojuangco's being an officer and member of the Board of Directors of the UCPB, the *link* between this alleged fact and the borrowings or advances was not established. Nor was there evidence on the loans or borrowings, their amounts, the approving authority, *etc*. As trial court, the Sandiganbayan could not presume his breach of fiduciary duties without evidence showing so, for fraud or breach of trust is never presumed, but must be alleged *and* proved.[128]

The thrust of the Republic that the funds were *borrowed* or *lent* might even preclude any consequent trust implication. In a contract of loan, one of the parties (*creditor*) delivers money or other consumable thing to another (*debtor*) on the condition

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[128] *Ng Wee v. Tankiansee*, G.R. No. 171124, February 13, 2008, 545 SCRA 263.

that the same amount of the same kind and quality shall be paid.[129] Owing to the consumable nature of the thing loaned, the resulting duty of the borrower in a contract of loan is *to pay,* not *to return,* to the creditor or lender the very thing loaned. This explains why the ownership of the thing loaned is transferred to the debtor upon perfection of the contract.[130] Ownership of the thing loaned having transferred, the debtor enjoys all the rights conferred to an owner of property, including the right to use and enjoy (*jus utendi*), to consume the thing by its use (*jus abutendi*), and to dispose (*jus disponendi*), subject to such limitations as may be provided by law.[131] Evidently, the resulting relationship between a creditor and debtor in a contract of loan cannot be characterized as fiduciary.[132]

To say that a relationship is fiduciary when existing laws do not provide for such requires evidence that confidence is reposed by one party in another who exercises dominion and influence. Absent any special facts and circumstances proving a higher degree of responsibility, any dealings between a lender and borrower are not fiduciary in nature.[133] This explains why, for example, a trust receipt transaction is not classified as a simple loan and is characterized as fiduciary, because the *Trust Receipts Law* (P.D. No. 115) punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner.[134]

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[129] Article 1933, *Civil Code*.

[130] See Article 1953, *Civil Code*.

[131] Article 428, *Civil Code*.

[132] See *Yong Chan Kim v. People*, G.R. No. 84719, January 5, 1991, 193 SCRA 344, 353-354, where the Court has ruled that there can be no fiduciary relationship created when the ownership of money was transferred, and for which a criminal action for *estafa* cannot prosper.

[133] *Oak Ridge Precision Industries, Inc. v. First Tennessee Bank National Association*, 835 S.W.2d 25, 30 (Tenn. Ct. App. 1992); *Foster Business Park, LLC v. Winfree*, No. M2006-02340-COA-R3-CV, 2009 WL 113242 (Tenn. Ct. App., 2009).

[134] *Consolidated Bank and Trust Corporation v. Court of Appeals*, G.R. No. 114286, April 19, 2001, 356 SCRA 671,680; citing *Colinares v. Court of Appeals*, G.R. No. 90828, September 5, 2000, 339 SCRA 609, 623.

Based on the foregoing, a debtor can appropriate the thing loaned without any responsibility or duty to his creditor to return the very thing that was loaned or to report how the proceeds were used. Nor can he be compelled to return the proceeds and fruits of the loan, for there is nothing under our laws that compel a debtor in a contract of loan to do so. As owner, the debtor can dispose of the thing borrowed and his act will not be considered misappropriation of the thing.[135] The only liability on his part is to pay the loan together with the interest that is either stipulated or provided under existing laws.

WHEREFORE, the Court dismisses the petitions for *certiorari* in G.R. Nos. 166859 and 169023; denies the petition for review on *certiorari* in G.R. No. 180702; and, accordingly, affirms the decision promulgated by the Sandiganbayan on November 28, 2007 in Civil Case No. 0033-F.

The Court declares that the block of shares in San Miguel Corporation in the names of respondents Cojuangco, *et al.* subject of Civil Case No. 0033-F is the exclusive property of Cojuangco, *et al.* as registered owners.

Accordingly, the lifting and setting aside of the Writs of Sequestration affecting said block of shares (namely: Writ of Sequestration No. 86-0062 dated April 21, 1986; Writ of Sequestration No. 86-0069 dated April 22, 1986; Writ of Sequestration No. 86-0085 dated May 9, 1986; Writ of Sequestration No. 86-0095 dated May 16, 1986; Writ of Sequestration No. 86-0096 dated May 16, 1986; Writ of Sequestration No. 86-0097 dated May 16, 1986; Writ of Sequestration No. 86-0098 dated May 16, 1986; Writ of Sequestration No. 86-0042 dated April 8, 1986; and Writ of Sequestration No. 87-0218 dated May 27, 1987) are affirmed; and the annotation of the conditions prescribed in the Resolutions promulgated on October 8, 2003 and June 24, 2005 is cancelled.

SO ORDERED.

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[135] De Leon, *Comments and Cases on Credit Transactions*, 2006 Edition, p. 30.

Corona, C.J., Velasco, Jr., del Castillo, Abad, Villarama, Jr., and *Perez, JJ.,* concur.

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

Mendoza, J., joins the position of *J*. Brion.

Sereno, J., joins the dissent of *J*. Carpio Morales.

Carpio, J., no part. He is one of petitioners in a petition to declare the coco levy funds public funds.

Nachura, J., no part. Signed pleading as Sol. Gen.

Leonardo-de Castro and *Peralta, JJ.,* no part.

DISSENTING OPINION

CARPIO MORALES, *J*.:

Before the Court are three consolidated[1] petitions — G.R. No. 166859, G.R. No. 169203 and G.R. No. 180702 — which involve related issues raised in Sandiganbayan Civil Case No. 0033-F, one of eight subdivided cases[2] arising from Civil

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[1] Per Resolution of January 28, 2008, *rollo* (G.R. No. 180702), Vol. III, pp. 1216-1217. The Court *en banc*, by Resolution of February 5, 2008, accepted the transfer and consolidation.

[2] *Vide rollo* (G.R. No. 169203), p. 46. The eight cases are:

Case No.	Subject Matter
Civil Case No. 0033-A	Anomalous Purchase and Use of First United Bank (now UCPB)
Civil Case No. 0033-B	Creation of Companies out of Coco Levy Funds
Civil Case No. 0033-C	Creation and Operation of Bugsuk Project and Award of ₱998M Damages to Agricultural Investors, Inc.
Civil Case No. 0033-D	Disadvantageous Purchases and Settlement of the Accounts of Oil Mills out of the Coco Levy Funds

Case No. 0033, the original complaint filed by the Republic of the Philippines (Republic) before the Sandiganbayan on July 31, 1987 which was, from 1987 to 1991, thrice amended or expanded, against respondents Eduardo Cojuangco, Jr. (Cojuangco) and Cojuangco-owned corporations (Cojuangco companies), and other defendants.

Subject of Civil Case No. 0033-F are two blocks of shares of stock in San Miguel Corporation (SMC): one approximately 31% of the outstanding capital stock of SMC consisting of 33,133,266 shares known as the Coconut Industry Investment Fund (CIIF) or **"CIIF Block"** registered in the names of 14 holding companies,[3] and another approximately 20% of the outstanding capital stock of SMC consisting of 27,198,545 shares[4] known as the **"Cojuangco, *et al*. Block"** registered in the names of respondents.

Disputed in the present petitions are the **sequestration** by the Republic through the Presidential Commission on Good Government (PCGG) and **ownership** of the "Cojuangco *et al*. Block" of SMC shares (hereafter referred to as subject SMC shares).

In *précis*, the Republic or the plaintiff claims, *inter alia*, that Cojuangco, a close associate of President Ferdinand Marcos, acquired the subject SMC shares by unlawfully using the coconut levy funds during the Marcos regime in *betrayal of public trust*

Civil Case No. 0033-E	Unlawful Disbursement and Dissipation of Coco Levy Funds
Civil Case No. 0033-F	**Acquisition of San Miguel Corporation**
Civil Case No. 0033-G	Acquisition of Pepsi Cola
Civil Case No. 0033-H	Behest Loans and Contracts.

[3] Referring to the defendants Soriano Shares, Inc., Roxas Shares, Inc., Arc Investors, Inc., Fernandez Holdings, Inc., Toda Holdings, Inc., ASC Investors, Inc., Randy Allied Ventures, Inc., AP Holdings, Inc., SMC Officers Corps, Inc., Te Deum Resources, Inc., Anglo Ventures, Inc., Rock Steel Resources, Inc., Valhalla Properties, Ltd., Inc., and First Meridian Development, Inc.

[4] At the time of sequestration, *infra* note 61.

and *with brazen abuse of power*. The Republic, through the PCGG, thus seeks to recover these subject SMC shares which it considers to be ill-gotten wealth "acquired and accumulated in flagrant breach of trust and of [Cojuangco *et al.*'s] fiduciary obligations as public officers, with grave abuse of right and power and in brazen violation of the Constitution and laws."[5]

The pertinent facts common to the three petitions and the proffered issues pertaining to each are set forth below.

Following the subdivision of Civil Case No. 0033, the Republic filed a "Third Amended Complaint (Subdivided) [Re: Acquisition of San Miguel Corporation (SMC)]"[6] dated May 12, 1995, docketed as Civil Case No. 0033-F, which the Sandiganbayan admitted along with the other subdivided complaints on March 24, 1999.

Respondents filed various motions to resolve the issue of the validity of the writs of sequestration on grounds other than that the corporate respondents were not impleaded as defendants in the corresponding judicial action, which ground was resolved by this Court in G.R. No. 96073.[7] On March 5, 1999, respondents filed another reiterative motion to assert that the writs of sequestration issued by the PCGG – including nine writs, namely Writ Nos. 86-0042, 86-0062, 86-0069, 86-0085, 86-0095, 86-0096, 86-0097, 86-0098 and 87-0218 covering the subject SMC shares[8] — were unauthorized and never became effective.

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[5] *Rollo* (G.R. No. 166859), p. 66.

[6] *Id.* at 64-92.

[7] *Republic v. Sandiganbayan (First Division),* 310 Phil. 401 (1995); *vide* Resolution of August 6, 1996.

[8] *Vide rollo* (G.R. No. 169203), pp. 306-316. The nine writs of sequestration are summarized as follows:

Writ No.	Property Covered	DateIssued	Issued By
1. 86-0042	Shares of stock in San Miguel Corporation registered in the names of:	April 8, 1986	Commissioner Mary Concepcion Bautista

Cojuangco and his co-respondent Cojuangco companies

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	a. Meadow Lark Plantations, Inc. b. Silver Leaf Plantations, Inc. c. Primavera Farms, Inc. d. Pastoral Farms, Inc. e. Black Stallion Ranch, Inc. f. Misty Mountains Agricultural Corp. g. Archipelago Realty Corp. h. Agricultural Consultancy Services, Inc. i. Southern Star Cattle Corp. j. LHL Cattle Corp. k. Rancho Grande, Inc. l. Dream Pastures, Inc. m. Far East Ranch, Inc. n. Echo Ranch, Inc. o. Land Air International Marketing Corp. p. Reddee Developers, Inc. q. PCY Oil Manufacturing Corp. r. Lucena Oil Factory, Inc. s. Metroplex Commodities, Inc. t. Vesta Agricultural Corp. u. Verdant Plantations, Inc. v. Kaunlaran Agricultural Corp.		
2. 86-0062	Insofar as it refers to shares of stock in San Miguel Corporation Registered in the names of: a. ECJ & Sons Agricultural Enterprises, Inc. b. Radyo Pilipino Corp. c. Metroplex Commodities, Inc.	April 21, 1986	Commissioner Ramon A. Diaz
3. 86-0069	Shares of stock in San Miguel Corporation registered in the names of: a. Discovery Realty Corporation b. First United Transport, Inc. c. Radyo Pilipino Corporation d. Radio Audience Developers Integrated Organization, Inc. e. Archipelago Finance and Leasing Corp. f. San Esteban Development Corp. g. Christensen Plantation Co. h. Northern Carriers Corp.	April 22, 1986	Commissioner Ramon A. Diaz
4. 86-0085	Insofar as it refers to San Miguel Corporation shares registered in the name of Venture Securities, Inc.	May 9, 1986	Commissioner Ramon A. Diaz
5. 86-0095	Shares of stock in San Miguel Corporation registered in the name of Balete Ranch, Inc.	May 16, 1986	Commissioner Ramon A. Diaz

thereafter filed their respective Answers[9] of June 23, 1999 and June 28, 1999, and a joint Pre-Trial Brief[10] of February 11, 2000. The other defendants[11] in Civil Case No. 0033-F also filed their separate Answers and Pre-Trial Briefs. The Republic submitted its Pre-Trial Brief of May 9, 2000.

Several parties moved to intervene. By Orders of May 24, 2000, the Sandiganbayan allowed the intervention of the Philippine Coconut Producers Federation, Inc. (Cocofed) and certain individuals, and denied the intervention of Gabay Foundation, Inc. By Resolution of May 6, 2004, the Sandiganbayan denied SMC's motion for intervention.

After the pre-trial was deemed terminated on May 24, 2000[12] and before the case could be set for trial, the Republic filed on July 25, 2002 a "Motion for Judgment on the Pleadings and/or for Partial Summary Judgment [Re: Defendants CIIF Companies,[13] 14 Holding Companies and COCOFED, *et al.*]." With respect

6. 86-0096	Shares of stock in San Miguel Corporation registered in the name of Oro Verde Services, Inc.	May 16, 1986	Commissioner Ramon A. Diaz
7. 86-0097	Shares of stock in San Miguel Corporation registered in the name of Eduardo M. Cojuangco, Jr.	May 16, 1986	Commissioner Ramon A. Diaz
8. 86-0098	Shares of stock in San Miguel Corporation registered in the name of Kalawakan Resorts, Inc.	May 16, 1986	Commissioner Ramon A. Diaz
9. 87-0218	Insofar as it refers to shares of stock in San Miguel Corporation registered in the name of Balete Ranch, Inc.	May 27, 1987	Commissioners Ramon E. Rodrigo and Quintin S. Doromal

[9] *Rollo* (G.R. No. 166859), pp. 93-112, 113-127.

[10] *Id.* at 128-143.

[11] Juan Ponce Enrile, Danilo Ursua, and the 14 Holding Companies and the CIIF Companies/Oil Mills (Southern Luzon Coconut Oil Mills, Cagayan de Oro Oil Co., Inc, Iligan Coconut Industries, Inc., San Pablo Manufacturing Corp., Granexport Manufacturing Corp., and Legaspi Oil Co., Inc.).

[12] *Rollo* (G.R. No. 169203), pp. 320-323.

[13] Also referred to as "CIIF Oil Mills."

to this CIIF block of SMC shares, the Sandiganbayan granted the motion, by Partial Summary Judgment[14] of May 7, 2004, as modified by Resolution of May 11, 2007.

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[14] *Rollo* (G.R. No. 169203), pp. 1030-1093; the dispositive portion of which, as modified, reads:

WHEREFORE , in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, *et al.*) filed by Plaintiff is hereby GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:

1. Southern Luzon Coconut Oil Mills (Solcom);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL)

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ASC Investors, Inc.;
3. Roxas Shares, Inc.;
4. Arc Investors, Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. SMC Officers Corps, Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties, Ltd., Inc.; and
14. First Meridian Development, Inc.

AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALLING 33,133, 266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT IN TRUST FOR ALL THE COCONUT FARMERS AND ORDERED RECONVEYED TO THE GOVERNMENT.

The aforementioned Partial Summary Judgment is now deemed a separate appealable judgment which finally disposes of the ownership of the CIIF Block of SMC Shares, without prejudice to the continuation of proceedings with respect to the remaining claims particularly those pertaining to the Cojuangco, *et al.* block of SMC shares.

SO ORDERED.

On July 11, 2003, the Republic filed a "Motion for Partial Summary Judgment [Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies]"[15] upon the thesis that the Sandiganbayan could already render a valid judgment on the basis of undisputed facts appearing on the record.

Meanwhile, by Resolution of October 8, 2003,[16] the Sandiganbayan "declared automatically lifted" the earlier enumerated nine writs of sequestration covering the subject SMC shares "for being null and void" and ordered the annotation of **four conditions**[17] on the relevant corporate books of SMC.

In nullifying the nine writs, the Sandiganbayan found that Writ Nos. 86-0062, 86-0069, 86-0085, 86-0095, 86-0096, 86-0097 and 86-0098 violated the rule that writs of sequestration

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[15] *Rollo* (G.R. No. 166859), pp. 144-186.

[16] The Resolution, albeit dated September 17, 2003, was promulgated on October 8, 2003 by the Sandiganbayan, the First Division of which was composed of Justices Teresita Leonardo-De Castro, Diosdado Peralta (*ponente*), Gregory Ong, Godofredo Legaspi, and Francisco Villaruz, Jr. [*rollo* (G.R. No. 169203), pp. 40-55].

[17] *Rollo* (G.R. No. 169203), p. 54. Ordered to be annotated are the following conditions:

(1) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case;

(2) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares;

(3) in the event of sale, mortgage or other disposition of the shares, by the Defendants Eduardo Cojuangco, *et al*., the consideration therefor, whether in cash or in kind, shall be placed in escrow with Land Bank of the Philippines, subject to disposition only upon further orders of this Court; and

(4) any cash dividends that are declared on the shares shall be placed in escrow with the Land Bank of the Philippines, subject to disposition only upon further orders of this Court. If in case stock dividends are declared, the conditions on the sale, pledge, mortgage and other disposition of any of the shares as above-mentioned in conditions 1, 2, and 3, shall likewise apply.

should be issued by at least two PCGG commissioners, while the first writ — Writ No. 86-0042 — which was issued prior to the promulgation of the two-commissioner rule and the last writ — Writ No. 87-0218 — were nonetheless lifted since the records failed to show that there was prior determination of a *prima facie* factual basis for the sequestration.

Acting on the Republic's Motion for Reconsideration of the Resolution of October 8, 2003 and on respondents' Motion for Modification of the same Resolution, the Sandiganbayan, by Resolution of June 24, 2005,[18] upheld the lifting of the nine writs of sequestration and deleted, for being unnecessary, the last two of the four conditions it imposed, drawing the Republic to challenge on *certiorari* before this Court in **G.R. No. 169203** the two Resolutions (Resolution of October 8, 2003 and Resolution of June 24, 2005) of the Sandiganbayan to which it attributes the commission of grave abuse of discretion in:

I.

. . . LIFTING WRIT OF SEQUESTRATION NOS. 86-0042 AND 87-0218 DESPITE THE EXISTENCE OF THE BASIC REQUISITES FOR THE VALIDITY OF SEQUESTRATION[;]

II.

. . . [DENYING] PETITIONER'S ALTERNATIVE PRAYER IN ITS MOTION FOR RECONSIDERATION FOR THE ISSUANCE OF AN ORDER OF SEQUESTRATION AGAINST ALL THE SUBJECT SHARES OF STOCK IN ACCORDANCE WITH THE RULING IN *REPUBLIC V. SANDIGANBAYAN*, 258 SCRA 685 (1996)[;]

III.

. . . SUBSEQUENTLY DELETING THE LAST TWO (2) CONDITIONS WHICH IT EARLIER IMPOSED ON THE SUBJECT SHARES OF STOCK.[19] (underscoring in the original)

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[18] *Id.* at 74-82.

[19] *Id.* at 11.

In the meantime, the Sandiganbayan, upon Cojuangco's and the Cojuangco companies' motion, authorized with a *caveat*[20] the sale of the subject SMC shares to the SMC Retirement Plan, the proceeds[21] of which were applied to their outstanding loan obligations to the United Coconut Planters Bank (UCPB).

Eventually, the Sandiganbayan, by Resolution of December 10, 2004, denied the Republic's motion for partial summary judgment after finding the existence of genuine factual issues. The Republic thereupon challenged this Resolution via petition for *certiorari* in **G.R. No. 166859**, imputing grave abuse of discretion on the part of the Sandiganbayan, particularly in:

(A)

. . . HOLDING THAT THE "VARIOUS SOURCES" OF FUNDS USED IN ACQUIRING THE SUBJECT SMC SHARES OF STOCK REMAIN DISPUTED[;]

(B)

. . . IN HOLDING THAT IT IS "DISPUTED" WHETHER OR NOT COJUANGCO, JR. HAD INDEED SERVED IN THE GOVERNING BODIES OF PCA, UCPB, AND/OR CIIF OIL MILLS[; AND]

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[20] The Sandiganbayan resolved: "This notwithstanding however, while the Court exempts the sale from the express condition that it shall be subject to the outcome of the case, defendants Cojuangco, *et al*. may well be reminded that despite the deletion of the said condition, they cannot transfer to any buyer any interest higher than what they have. No one can transfer a right to another greater than what he himself has. Hence, in the event that the Republic prevails in the instant case, defendants Cojuangco, *et al*. hold themselves liable to their tranferees-buyers, especially if they are buyers in good faith and for value. In such eventuality, defendants Cojuangco *et al*. cannot be shielded by the cloak of principle of *caveat emptor* because "case law has it that this rule only requires the purchaser to exercise such care and attention as is usually exercised by ordinarily prudent man in like business affairs, and only applies to defects which are open and patent to the service of one exercising such care." [Sandiganbayan Decision of November 28, 2007, p. 34, citing Records, Vol. 18, pp. 181-195].

[21] In the amount of "four billion, three hundred eighty six million, one hundred seven thousand, four hundred twenty-eight pesos and thirty four centavos (Php4,786,107,428.34)"(*sic*) [Sandiganbayan Decision of November 28, 2007, p. 35, citing Manifestation filed on August 7, 2007 (Records, Vol. 19)].

(C)

. . . IN NOT FINDING THAT COJUANGCO, JR. TOOK ADVANTAGE OF HIS POSITION AND VIOLATED HIS FIDUCIARY OBLIGATIONS IN ACQUIRING THE SUBJECT SMC SHARES OF STOCK.[22]

By the Republic's claim, trial had become unnecessary in view of the admissions made by respondents in their pleadings (*i.e.*, their respective Answers and their Pre-Trial Brief) which suffice for the rendition of a valid judgment.

During the pendency of the two petitions earlier filed with this Court, the Sandiganbayan, upon respondents' motion, set the case for trial on August 8, 10, 11, 2006.

Consistent with its earlier position that trial had become unnecessary, the Republic did not present further evidence and instead submitted an August 28, 2006 "Manifestation of Purposes" that served as its offer of evidence. After the admission of the Republic's documentary evidence on September 18, 2006,[23] respondents, who found no need to present controverting evidence, filed on November 24, 2006 a "Submission and Offer of Evidence of Defendants." Following the admission of respondents' documentary evidence, the parties submitted their respective Memoranda[24] and Reply-Memoranda.[25]

By Decision of November 28, 2007,[26] the Sandiganbayan dismissed the Third Amended Complaint in subdivided Civil Case No. 0033-F for failure of the Republic to prove by preponderance of evidence its causes of action against the defendants. Thus the Sandiganbayan disposed:

WHEREFORE, in view of all the foregoing, the Court is constrained to DISMISS, as it hereby DISMISSES, the Third Amended

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[22] *Rollo* (G.R. No. 166859), pp. 20-21.

[23] *Rollo* (G.R. No. 180702), Vol. III, pp. 883-884.

[24] *Id.* at 885-1059.

[25] *Id.* at 1127-1214.

[26] Penned by Justice Diosdado M. Peralta, with Justices Teresita Leonardo-De Castro and Efren N. De la Cruz, concurring.

Complaint in subdivided Civil Case No. 0033-F **for failure of plaintiff to prove by preponderance of evidence its causes of action against defendants** with respect to the twenty percent (20%) outstanding shares of stock of San Miguel Corporation registered in defendants' names, denominated herein as the "Cojuangco, *et al*. block" of SMC shares. For lack of satisfactory warrant, the counterclaims in defendants' Answers are likewise ordered dismissed.

SO ORDERED.[27] (emphasis and underscoring supplied)

Hence, the Republic's appeal in **G.R. No. 180702** upon the following issues:

I

WHETHER THE HONORABLE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED CIVIL CASE NO. 0033-F; AND;

II

WHETHER OR NOT THE SUBJECT SHARES IN SMC, WHICH WERE ACQUIRED BY, AND ARE IN THE RESPECTIVE NAMES OF RESPONDENTS COJUANGCO, JR. AND THE COJUANGCO COMPANIES, SHOULD BE RECONVEYED TO THE REPUBLIC OF THE PHILIPPINES FOR HAVING BEEN ACQUIRED USING COCONUT LEVY FUNDS.[28] (emphasis and underscoring supplied)

Certain individuals and organizations jointly filed before this Court a petition-in-intervention.[29] From among them, only petitioner-intervenors Jovito Salonga, Wigberto Tañada, Oscar Santos, Pambansang Kilusan Ng Mga Samahan Ng Magsasaka (PAKISAMA) represented by Vicente Fabe, Surigao Del Sur Federation of Agricultural Cooperatives (SUFAC), and Moro Farmers Association of Zamboanga Del Sur (MOFAZS), the

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[27] *Rollo* (G.R. No. 180702), Vol. I, p. 130.

[28] *Rollo* (G.R. No. 180702), Vol. II, pp. 421-422.

[29] *Rollo* (G.R. No. 180702), Vol. 1, pp. 18-62. Petitioner-intervenors also repleaded and adopted in G.R. No. 169203 the allegations in their petition in G.R. No. 180702. [*rollo* (G.R. No. 169203), pp. 449-460].

last two represented by Romeo Royandoyan, were allowed to intervene by Resolution of March 25, 2008.[30]

In challenging the Sandiganbayan Decision of November 28, 2007, petitioner-intervenors proffer that the Sandiganbayan gravely erred and decided the case in violation of law and applicable rulings in

I

. . . RULING THAT, WHILE ADMITTEDLY THE SUBJECT SMC SHARES WERE PURCHASED FROM LOAN PROCEEDS FROM UCPB AND ADVANCES FROM THE CIIF OIL MILLS, SAID SUBJECT SMC SHARES ARE NOT PUBLIC PROPERTY[; AND]

II

. . . IN FAILING TO RULE THAT, EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT LOAN PROCEEDS FROM UCPB ARE NOT PUBLIC FUNDS, STILL, SINCE RESPONDENT COJUANGCO, IN THE PURCHASE OF THE SUBJECT SMC SHARES FROM SUCH LOAN PROCEEDS, VIOLATED HIS FIDUCIARY DUTIES AND TOOK A COMMERCIAL OPPORTUNITY THAT RIGHTFULLY BELONGED TO UCPB (A PUBLIC CORPORATION), THE SUBJECT SMC SHARES SHOULD REVERT BACK TO THE GOVERNMENT.[31] (underscoring supplied)

I shall discuss G.R. No. 169203, before jointly tackling G.R. No. 166859 and G.R. No. 180702 which involve an interlacing issue.

RULING IN G.R. NO. 169203

The issuance by the Sandiganbayan of its assailed Decision in G.R. No. 180702 notwithstanding, I proceed to tackle the issues bearing on the issuance of the writs of sequestration in view of the significant and novel issues raised in G.R. No. 169203.

Section 3 of the PCGG Rules and Regulations promulgated on April 11, 1986 reads:

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[30] *Rollo* (G.R. No. 180702), Vol. V, unpaginated.

[31] *Rollo* (G.R. No. 180702), Vol. I, p. 34.

Sec. 3. *Who may issue*. A writ of sequestration or a freeze or hold order may be issued by the Commission **upon the authority of at least two Commissioners**, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted. (emphasis supplied)

Respecting the lifting of the seven writs, the Sandiganbayan committed no grave abuse of discretion as their issuance violated the immediately-quoted provision of Section 3 of the PCGG Rules and Regulations. Indeed, the Sandiganbayan merely adhered to this Court's 1998 ruling in *Republic v. Sandiganbayan*[32] which construed Section 3 to mean that the authority given by two commissioners for the issuance of a sequestration, freeze or hold order should be evident in the order itself.

The construction advanced by petitioner creates rather than clears ambiguity. The fair and sensible interpretation of the PCGG Rule in question is that the authority given by two commissioners for the issuance of a sequestration, freeze or hold order should be evident in the order itself. Simply stated, **the writ must bear the signatures of two commissioners, because their signatures are the best evidence of their approval thereof.** Otherwise, the validity of such order will be open to question and the very evil sought to be avoided— the use of spurious or fictitious sequestration orders— will persist. The corporation or entity against which such writ is directed will not be able to visually determine its validity, unless the required signatures of at least two commissioners authorizing its issuance appear on the very document itself. **The issuance of sequestration orders requires the existence of a *prima facie* case. The two-commissioner rule is obviously intended to assure a collegial determination of such fact.** In this light, a writ bearing only one signature is an obvious transgression of the PCGG Rules.

Inasmuch as sequestration tends to impede or limit the exercise of proprietary rights by private citizens, it **should be construed strictly against the state**, pursuant to the legal maxim that statutes in derogation of common rights are in general strictly

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[32] G.R. No. 119292, July 31, 1998, 293 SCRA 440.

construed and rigidly confined to cases clearly within their scope and purpose. x x x[33] (emphasis supplied)

The Republic, in fact, impliedly concedes that the seven writs of sequestration were tainted with violations of the two-commissioner rule.

With respect to the lifting of the two other writs, Writ Nos. 86-0042 and 87-0218 which, albeit did not violate the two-commissioner rule,[34] were lifted for lack of *prima facie* basis for their issuance, that involves a *factual* issue. It is settled that the Court does not resolve a question of fact, which exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[35]

IN ANY EVENT, I find no grave abuse of discretion on the part of the Sandiganbayan in arriving at its finding that the issuance of the two writs lacks *prima facie* factual foundation that the properties covered thereby are ill-gotten wealth. For, for the issuance of a writ of sequestration to be valid, it must not only be shown that it was authorized by the PCGG and was signed by at least two commissioners; it must also be shown that there is a *prima facie* showing that the property subject thereof sequestered was ill-gotten wealth.[36]

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[33] *Republic v. Sandiganbayan, id.* at 454-456.

[34] Writ No. 87-0218, it may be recalled, was actually signed by two PCGG commissioners, while Writ No. 86-0042 was issued before the subject rules took effect; *vide YKR Corporation v. Sandiganbayan*, G.R. No. 162079, March 18, 2010, and *Republic of the Philippines v. Sandiganbayan*, 336 Phil. 304, 318-319 (1997) on the non-retroactivity of the PCGG rules.

[35] *Republic v. Sandiganbayan*, G.R. No. 135789, January 31, 2002, 375 SCRA 425, 429.

[36] *Vide Presidential Commission on Good Government v. Tan*, G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, wherein the Court examined and evaluated the order of sequestration and the minutes of the meeting.

The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect to render the sequestration of a corporation and its properties void *ab initio*.[37] That there are allegations in the subsequently filed complaint indicative of ill-gotten wealth does not prove *per se* that an actual deliberation or consideration of evidence was *priorly* made to arrive at the required quantum of proof for the issuance of the sequestration orders. As found by the Sandiganbayan, the records of the PCGG were either utterly silent or entirely insufficient on its compliance with this requirement. There were no minutes of any meeting leading to the issuance of Writ No. 86-0042 which was signed "for the commission" by Commissioner Mary Concepcion Bautista on April 8, 1986. As for Writ No. 87-0218 which was issued on May 27, 1987, the only relevant document presented relates to the minutes of the May 26, 1987 meeting which reads:

> The Commission approved the recommendation of Dir. Cruz to sequester all the shares of stock, assets, records, and documents of Balete Ranch, Inc. and the appointment of the Fiscal Committee with ECI Challenge, Inc. / Pepsi-Cola for Balete Ranch, Inc. and the Aquacor Marketing Corp. vice Atty. S. Occena. The objective is to consolidate the Fiscal Committee activities covering three associated entities of Mr. Eduardo Cojuangco. Upon recommendation of Comm. Rodrigo, the reconstitution of the Board of Directors of the three companies was deferred for further study.[38]

The dearth of any record from which a deliberation or derivation of a *prima facie* finding could be established renders nugatory the "*opportunity to contest*" afforded to a person whose property is sequestered.

While it has been held in *Bataan Shipyard & Engineering Co, Inc*. that orders of sequestration may issue *ex parte*¸ it was emphasized that a *prima facie* factual foundation that the properties sequestered are "ill-gotten wealth" is required, and that the person whose property

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[37] *Republic v. Sandiganbayan*, G.R. No. 88126, July 12, 1996, 258 SCRA 685.

[38] *Rollo* (G.R. No. 169203), p. 50.

is sequestered **has the opportunity to contest the validity of sequestration** pursuant to Sections 5 and 6 of the Rules and Regulations of PCGG itself. Indeed, that "opportunity to contest" includes resort to the courts. The "opportunity to contest" will be meaningless **unless there is a record, on the basis of which the reviewing authority, including the court, may determine whether the PCGG's ruling that the property sequestered is "ill-gotten wealth" was issued "with grave abuse of discretion amounting to lack or excess of jurisdiction**." That record should include the reason why the shares of stock are being sequestered and the record of the proceedings, on the basis of which, issuance of the order of sequestration was authorized. Those records do not exist here.[39] (emphasis in the original)

While certain statements in the 1995 case of *Republic v. Sandiganbayan*— [40] which likewise involved Sandiganbayan

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[39] *Presidential Commission on Good Government v. Tan*, *supra* note 36 at 483-484.

[40] *Republic v. Sandiganbayan*, *supra* note 7 at 494-495:

VIII. Indications that Some Corporations Are In Fact Mere "Dummies"

To be sure, the records of these cases abound with indications, mostly in the form of admissions, that several of the corporations listed in the complaint against Eduardo J. Cojuangco, Jr. are "dummies" or manipulated instruments, or repositories of wealth deceitfully amassed at the expense of the People, or simply the fruits thereof.

A. Dummy Owners of San Miguel Corporation (SMC) Stock

For instance three (3) corporations, namely: (1) Meadow-Lark Plantations, Inc., (2) Primavera Farms, Inc., and (3) Silver-Leaf Plantations, Inc., appear in the books of San Miguel Corporation (SMC) as owners of 8,138,440 shares of the latter's stock. And a certain Jose C. Concepcion also appears in its books as owner of "San Miguel Corporation Stock Certificate No. A962930 for 5,000 shares."

All the outstanding capital stock (100%) of these three (3) companies is owned by five (5) persons, all lawyers, namely: (1) the aforenamed Jose C. Concepcion, (2) Victoria C. de los Reyes, (3) Florentino M. Herrera III, (4) Teresita J. Herbosa, and (5) Jose Riodil Montebon. Concepcion, Herbosa and Montebon are members of one law firm; Herrera and de los Reyes are members of another.

All these (5) are shown to be signatories of three (3) identically worded voting trust agreements executed on April 13, 1984 giving to Eduardo M. Cojuangco, Jr. the right to vote for a period of five (5)

Civil Case No. 0033— could be construed to mean that this Court therein ruled that the subject SMC shares are *prima facie* ill-gotten, those statements must be taken in their proper context. The issue in that case was not whether there was a *prima facie* case that the subject SMC shares, *inter alia*, were ill-gotten to warrant the issuance of sequestration orders. The issue was, as therein stated:

DOES INCLUSION IN THE COMPLAINT FILED BY THE PCGG BEFORE THE SANDIGANBAYAN OF SPECIFIC ALLEGATIONS OF CORPORATIONS BEING "DUMMIES" OR UNDER THE CONTROL OF ONE OR ANOTHER OF THE DEFENDANTS NAMED

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years, the shares of stock of the three (3) corporations above mentioned — of the entire capital stock of which they are, as aforestated, the ostensible owners.

Moreover, there are on record more or less identically worded affidavits of Jose C. Concepcion, Teresita J. Herbosa and Jose R.D. Montebon frankly confessing that the shares of stock listed under their names in the corporate books of the three (3) corporations above mentioned — and several other firms shortly to be named — were merely assigned to them as "nominee stockholders," but in truth they do "not have any proprietary interest in any of . . . (said) shares of stock."

Concepcion's affidavit contains the additional declaration of his being "nominee stockholder" of "San Miguel Corporation Stock Certificate No. A962930 for 5,000 shares and all stock dividends declared thereon," *supra*, although in truth he does "not have any proprietary interest" therein.

It thus appears that by their own unequivocal admissions, not one of the aforementioned five attorneys is the owner of the stock under their names in the three (3) corporations above mentioned, which in turn own not inconsiderable stock in San Miguel Corporation.

Jose C. Concepcion appears further more to have executed in blank three (3) documents entitled "DECLARATION OF TRUST AND ASSIGNMENT OF SUBSCRIPTION," all dated April 13, 1984, in each of which he (a) declares that all shares of stock registered in his name in the three corporations above named (Meadow-Lark Plantations, Inc., Primavera Farms, Inc., and Siver-Leaf Plantations, Inc.) were assigned to him "only as nominee and only for the benefit and in trust for" an assignee whom he does not name, and (b) binds himself "to assign, transfer and convey all his rights, title and interest in the aforesaid shares of stock in favor of the (unnamed) ASSIGNEE or his nominees or assigns at anytime upon the request of the ASSIGNEE."

THEREIN AND USED AS INSTRUMENTS FOR ACQUISITION, OR AS BEING DEPOSITARIES OR PRODUCTS, OF ILL-GOTTEN WEALTH; OR THE ANNEXING TO SAID COMPLAINTS OF A LIST OF SAID FIRMS, BUT WITHOUT ACTUALLY IMPLEADING THEM AS DEFENDANTS, SATISFY THE CONSTITUTIONAL REQUIREMENT THAT IN ORDER TO MAINTAIN A SEIZURE EFFECTED IN ACCORDANCE WITH EXECUTIVE ORDER NO. 1, s. 1986, THE CORRESPONDING "JUDICIAL ACTION OR PROCEEDING" SHOULD BE FILED WITHIN THE SIX-MONTH PERIOD PRESCRIBED IN SECTION 26, ARTICLE XVIII, OF THE (1987) CONSTITUTION? (underscoring supplied)

That this Court in the immediately-cited 1995 *Republic v. Sandiganbayan* case left unresolved the issue of whether there was *prima facie* factual basis for the issuance of the sequestration orders of subject SMC shares is plain from its Resolution of August 6, 1996 disposing of the PCGG's motions for reconsideration, *viz.*:

The Court deliberated x x x and thereafter Resolved to DENY both motions for lack of merit. **The Court has made known its mandate that the ultimate factual issue of who are the legitimate, *bona fide* owners of the sequestered assets be resolved by the Sandiganbayan with all reasonable dispatch, as well as all other related and incidental questions, such as whether there is *prima facie* factual foundation for the sequestration of said assets or for apprehension of dissipation, loss or wastage in the event the sequestered shares of stock are in the interim voted by their registered holders.** It is the Sandiganbayan which must now be acknowledged to have discretion and authority to determine the precise issues which **still have to be, or need no longer be**, passed upon and adjudicated in light of the relevant dispositions of this Court, the evidence already before the Sandiganbayan, and whatever comments, observations, suggestions and proposals may be submitted by the parties — these being details which this Court need not and will not attend to.[41] (emphasis and underscoring supplied)

Clearly, this Court in the same case did not touch upon the validity of the writs of sequestration on grounds other than the non-impleading of the corporate respondents as defendants in

[41] *Republic v. Sandiganbayan*, *supra* note 7.

the corresponding judicial action instituted within six months after the ratification of the 1987 Constitution, as required under Section 26, Article XVIII thereof. In fact, the corporate respondents withdrew the assertion of lack of *prima facie* factual basis as a ground in assailing the issuance of sequestration orders and limited their petition on just one ground.[42] On whether the objection of lack of *prima facie* factual basis could still be validly entertained, despite the omnibus motion rule,[43] I need not belabor this issue, especially since none of the parties raised or considered this point.

The Republic goes on to fault the Sandiganbayan for denying its alternative prayer in its motion for reconsideration — for the issuance by the Sandiganbayan of an order of sequestration against the subject SMC shares in accordance with this Court's decision in the 1996 case of *Republic v. Sandiganbayan,*[44] the pertinent portion of which reads:

> x x x In brief, the matter of the legality and propriety of the sequestration of respondent corporation became but an incident in said Civil Case No. 0010 and thus *subject exclusively to judicial adjudication by the respondent Court*. We thus uphold the ruling of respondent Court on this issue:
>
> > x x x (c) While Freeze Orders and writs of sequestration may continue to be issued within eighteen (18) months from February 2, 1987, this could obviously refer only to matters which have not yet been subject of litigation initiated by the Republic (*i.e*., the PCGG); because
> >
> > (d) Once suit has been initiated on a particular subject, the entire issue of the alleged ill-gotten wealth— the acts or omissions of a particular defendant or set of defendants— will have become subject exclusively to judicial adjudication. The

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[42] The Sandiganbayan, by Resolution of April 8, 1992, granted corporate respondents' motion to withdraw the ground of lack of *prima facie* showing. [*vide* private respondents' Comment (in G.R. No. 180702) of May 7, 2008 on its Annex "G", pp. 4-6].

[43] RULES OF COURT, Rule 15, Sec. 8.

[44] *Supra* note 37.

> issue of ill-gotten properties under the causes of action alleged in the Complaints will have been removed from the quasi-judicial level of the PCGG and elevated to the judicial level of the SANDIGANBAYAN, the Court which today maintains exclusive original jurisdiction on these matters;
>
> (e) Writs may thereafter [*i.e.*, after the lapse of eighteen months from February 2, 1987] still issue, of course, and writs already issued may thereafter be certainly quashed, dissolved, set aside or modified; but this time, only by the Courts, whether the Sandiganbayan or the Supreme Court. The power over these assets has become exclusively judicial.[45] (italics in the original)

Nowhere in the immediately-quoted portion of this Court's decision was it mentioned that the Sandiganbayan has the power to issue a writ of sequestration similar to that vested in the PCGG. The quoted portion relates solely to the resolution of the second issue in that case — whether the Sandiganbayan has "jurisdiction over a motion questioning the validity of a 'sequestration order' issued by a duly authorized representative of the PCGG." In ruling in the affirmative, this Court settled that the matter of the *legality* and *propriety* of a sequestration, being an incident of the case, is subject "exclusively to judicial adjudication" by the Sandiganbayan. The Court therein emphatically reiterated that the remedies are always subject to the control of the Sandiganbayan which acts as the arbiter between the PCGG and the claimants. Moreover, the Court, in no uncertain terms, recognized that under no circumstance can a sequestration or freeze order be validly issued by one who is not a Commissioner of the PCGG. The Sandiganbayan's ample power referred to therein to control the proceedings refers to the issuance of ancillary orders or writs of attachment, upon proper application, to effectuate its judgment, but does *not* include the power to seize in the first instance properties purporting to be ill-gotten.[46]

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[45] *Id.* at 697-698.

[46] *Vide Soriano III v. Yuson*, No. 74910, August 10, 1988, 164 SCRA 226 where the Court ruled that the Sandiganbayan's exclusive jurisdiction evidently extends not only to the principal causes of action, *i.e.*, the recovery of ill-gotten wealth, but also to all incidents arising from, incidental to, or related to, such cases, such as the dispute over the sale of the shares, the

With regard to the order for the annotation of the four restrictive conditions on the relevant corporate books of the SMC, **despite** the lifting of the writs of sequestration, the Sandiganbayan was bereft of jurisdiction to do so. While it has ample power to make such interlocutory orders as may be necessary to ensure that its judgment would not be rendered ineffective,[47] that is not a license for it to *motu proprio* issue every order it may deem fit.

The intended annotation of the four conditions is akin to a notice of *lis pendens*, which applies only in an action affecting the title or right of possession of *real* property. The case involves *personal* property, however.

Under the third, fourth and fifth causes of action of the Complaint, there are allegations of breach of trust and confidence and usurpation of business opportunities in conflict with petitioners' fiduciary duties to the corporation, resulting in damage to the Corporation. Under these causes of action, respondents are asking for the delivery to the Corporation of possession of the parcels of land and their corresponding certificates of title. Hence, the suit necessarily affects the title to or right of possession of the real property sought to be reconveyed. **The Rules of Court allows the annotation of a notice of *lis pendens* in actions affecting the title or right of possession of real property**. x x x[48] (italics in the original omitted; underscoring and emphasis supplied)

Even in cases of attachment, both the Revised Rules of Court and Corporation Code do not require annotation on the corporation's stock and transfer books for the attachment of shares of stock to be valid and binding on the corporation and third party.[49]

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propriety of the issuance of ancillary writs or provisional remedies relative thereto, and the sequestration thereof.

[47] *Republic v. Sandiganbayan*, G.R. No. 88228, June 27, 1990, 186 SCRA 864 where the Sandiganbayan, upon motion, placed the cash dividends of a sequestered corporation in *custodia legis* instead of allowing them to remain in the name and under the control of one of the litigants.

[48] *Gochan v. Young*, 406 Phil. 663, 679 (2001).

[49] *Chemphil Export and Import v. CA*, 321 Phil. 619, 645 (1995).

If the Republic wanted to be assured that any judgment in its favor would be enforceable, there are available remedies for the purpose. The 1998 *Republic v. Sandiganbayan*[50] case instructs:

In brief, sequestration is not the be-all and end-all of the efforts of the government to recover unlawfully amassed wealth. The PCGG may still proceed to prove in the main suit who the real owners of these assets are. Besides, as we reasserted in *Republic vs. Sandiganbayan,* **the PCGG may still avail itself of ancillary writs, since "Sandiganbayan's jurisdiction over the sequestration cases demands that it should also have the authority to preserve the subject matter of the cases, the alleged ill-gotten wealth properties** x x x."

With the use of proper remedies and upon substantial proof, properties in litigation may, when necessary, be placed in *custodia legis* for the complete determination of the controversy or for the effective enforcement of the judgment. However, for violating the Constitution and its own Rules, the PCGG may no longer exercise dominion and custody over Respondent Corporation and the shares it owns in PTIC. (emphasis and underscoring supplied)

It may be argued that respondents, not having elevated the June 24, 2005 Resolution that denied their Motion for Modification, albeit the Sandiganbayan partially modified its earlier imposition of conditions on the lifting of the nine writs of sequestration, are presumed to be satisfied therewith, hence, no modification of judgment or new affirmative relief can be granted to them at this stage.[51]

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[50] *Supra* note 32 at 468 citing *Republic v. Sandiganbayan*, *supra* note 47 at 872-873.

[51] Vide *Universal Staffing Services, Inc. v. National Labor Relations Commission*, G.R. No. 177576, July 21, 2008, 559 SCRA 221, 231-232: It is a well-settled procedural rule in this jurisdiction, and we see no reason why it should not apply in this case, that an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed. He can assign errors on appeal if such is required to strengthen the views expressed by the court *a quo*.

Prudential Bank & Trust Co. v. Reyes,[52] however, distinguishes an ordinary appeal from a special civil action of *certiorari*, insofar as the application of the rule against granting affirmative reliefs to a non-appealing party is involved. On the one hand, it is settled that in ordinary appeals a party who did not appeal cannot seek affirmative relief other than the ones granted in the disputed decision. An appellant can assign as many errors as he may deem to be reversible. On the other hand, resort to a judicial review in a petition for *certiorari* is confined to issues of want or excess of jurisdiction and grave abuse of discretion that go into the validity of the challenged issuance.

In the petition at bar, the deletion by the Sandiganbayan of some of the conditions is intimately related to the corollary retention of the remaining conditions. Otherwise stated, the Court, in determining grave abuse of discretion on the part of the Sandiganbayan in removing, by Resolution of June 24, 2005, two of the four conditions, would necessarily and inescapably have to come to terms with the Sandiganbayan's maintaining the other conditions, which is merely a consequence of the single act of modifying the Resolution of October 8, 2003.

IN SUM, I find that the Sandiganbayan committed no grave abuse of discretion insofar as it lifted the nine writs of sequestration, but it was bereft of jurisdiction in imposing the restrictive conditions. The lifting of the sequestration orders does not *ipso facto* mean that the sequestered properties are not ill-gotten bears reiteration, however. For the effect of the lifting of the sequestration against a corporation or its shares is merely to terminate the role of the government as conservator thereof.[53]

Such assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of modifying the judgment in the appellee's favor and giving him other affirmative reliefs. (underscoring supplied)

[52] 404 Phil. 961, 979 (2001).

[53] Vide *Presidential Commission on Good Government v. Sandiganbayan*, 418 Phil. 8, 20 (2001); *Republic of the Phils. v. Sandiganbayan*, 355 Phil. 181, 206-207 (1998).

RULING IN G.R. NOS. 166859 & 180702

As reflected in the proceedings narrated above, the petition in G.R. No. 166859 challenging the Sandiganbayan's denial of the Republic's motion for partial summary judgment has been overtaken by events that culminated in the promulgation by the Sandiganbayan of its Decision of November 28, 2007 which is being assailed in G.R. No. 180702. Records show that the parties were subsequently given the opportunity to present evidence necessary to establish their respective claims or defenses. As noted earlier, however, they opted to forego presenting evidence during the trial.

Respondents raise a procedural objection on the basis of the limitation of the remedy under Rule 45, arguing that the petition for review on *certiorari* in G.R. No. 180702 raises questions of fact, of which this Court cannot take cognizance as it is limited to reviewing errors of law.

The distinction between "questions of law" and "questions of fact" has long been settled. There is a question of law when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct is a question of law.[54] Whether a question is one of law or of fact is not determined by the appellation given to such question by the party raising it; rather, it is whether a court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[55]

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[54] *Cucueco v. Court of Appeals*, G.R. No. 139278, October 25, 2004, 441 SCRA 290, 298.

[55] *Vide id.* at 299.

The resolution of the issues involved in G.R. No. 180702 does not entail a reevaluation of the probative value of documentary evidence or the credibility of witnesses, for none was presented during the trial. The Court needs only to look into the **pleadings** and the **parties' submissions** without necessarily going into the truth or falsity thereof.[56] Any review would only be limited to the inquiry of whether the law was properly applied given the submissions which are part of the record, the fact of filing of which is not contested by the parties.[57] Since the petition assails the correctness of the conclusions drawn by the Sandiganbayan from the set of facts it considered, the question is one of law.[58]

In the joint determination of the two petitions, the linking bone of contention boils down to the *core issue* of **whether, on the basis of the submissions made of record, the subject SMC shares should be reconveyed to the Republic for having been acquired with the use of coconut levy funds.**

It is proper to dissuade any confusion that might be engendered without a clear delineation of the set of proceedings that, on the one hand, transpired up to that point where the motion for summary judgment was resolved, which is the one pertinent to **G.R. No. 166859**, and, on the other hand, the subsequent settings for trial that afforded both the Republic and Cojuangco, *et al*. the opportunity to present evidence until the rendition of the assailed Decision, which is the episode to be considered in **G.R. No. 180702**.

Being mindful of this marked difference in terms of the proceedings conducted is highly important in order to illustrate and recognize situations where, as in this case, **a plaintiff may be denied summary judgment but, if the case proceeds *ceteris***

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[56] *Rivera v. United Laboratories, Inc.*, G.R. No. 155639, April 22, 2009, 586 SCRA 269, 288.

[57] Vide *Cucueco v. Court of Appeals, supra* note 54 at 300.

[58] Vide *Technol Eight Philippines Corp. v. National Labor Relations Commission*, G.R. No. 187605, April 13, 2010, 618 SCRA 248.

***paribus*,**[59] **a plaintiff may yet obtain a favorable judgment when the defendant fails to (i) vary or override a judicial admission in instances where it may be allowed, (ii) refute a disputable presumption or *prima facie* pronouncement, or (iii) otherwise go forward with the burden of evidence in proving an affirmative defense or disproving a negative assertion**.

For, in the present case, I find the denial of the motion for summary judgment to be proper only upon the grant to Cojuangco, *et al.* of the benefit of all favorable inferences in viewing the evidence and that any doubt as to the existence of an issue of fact must be resolved against the movant Republic. This afforded Cojuangco, *et al.* the entitlement to defend or go to trial, precisely to demonstrate that their defense is not sham, fictitious or contrived, which "benefit of favorable inference" could not have otherwise been settled through the hearing on the motion for summary judgment.

In its Resolution of December 10, 2004 (assailed in G.R. No. 166859), which was heavily relied upon in its Decision of November 28, 2007 (assailed in G.R. No. 180702), the Sandiganbayan enumerated the following:

UNDISPUTED FACTS

1. Defendant Eduardo M. Cojuangco, Jr. admits that he acquired in 1983 approximately twenty percent (20%) of the outstanding shares of stock of SMC which are registered in his name and in the name of defendant corporations, x x x[60]

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[59] Latin phase which means "with all other factors or things remaining the same." <http://www.thefreedictionary.com/>

[60] The Sandiganbayan enumerates these corporations as follows:

(1) Agricultural Consultancy Services, Inc.
(2) Archipelago Realty Corp.,
(3) Balete Ranch, Inc.,
(4) Black Stallion Ranch, Inc.,
(5) Christensen Plantation Company,
(6) Discovery Realty Corp.,

2. Defendant Cojuangco used the proceeds of loans obtained by said defendant from various sources in purchasing the said block of shares;

3. The said block of shares were purchased by defendant Eduardo M. Cojuangco, Jr. from Ayala Corporation, of which Mr. Enrique Zobel was then the Chairman and Chief

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(7) Dream Pastures, Inc.,
(8) Echo Ranch, Inc.,
(9) Far East Ranch, Inc.
(10) Filsov Shipping Company, Inc.,
(11) First United Transport, Inc.,
(12) Habagat Realty Development, Inc.,
(13) Kalawakan Resorts, Inc.,
(14) Kaunlaran Agricultural Corp.,
(15) Labayug Air Terminals, Inc.,
(16) Landair International Marketing Corp.,
(17) LHL Cattle Corporation,
(18) Lucena Oil Factory, Inc.,
(19) Meadow Lark Plantations, Inc.,
(20) Metroplex Commodities, Inc.,
(21) Misty Mountain Agricultural Corp.,
(22) Northeast Contract Traders, Inc.,
(23) Northern Carriers Corporation,
(24) Oceanside Maritime Enterprises, Inc.
(25) Oro Verde Services, Inc.,
(26) Pastoral Farms, Inc.,
(27) PCY Oil Manufacturing Corp.,
(28) Philippine Technologies, Inc.,
(29) Primavera Farms, Inc.,
(30) Punong-Bayan Housing Development Corp.,
(31) Pura Electric Company Inc.,
(32) Radio Audience Developers Integrate Organization, Inc.
(33) Radyo Pilipino Corporation,
(34) Rancho Grande, Inc.,
(35) Reddee Developers, Inc.,
(36) San Esteban Development Corp.,
(37) Silver Leaf Plantations, Inc.,
(38) Southern Service Traders, Inc.,
(39) Southern Star Cattle Corp.,
(40) Spade One Resorts Corp.,
(41) Unexplored Land Developers, Inc.,
(42) Verdant Plantations, Inc.,
(43) Vesta Agricultural Corp. and
(44) Wings Resorts Corporation

Executive Officer, and from several other corporations and individuals;

4. The total of 27,198,545 shares of stocks in the SMC at the time of sequestration in 1989, by reason of the declaration of 100% stock dividends and subsequent stock split, has grown to 108,846,948, x x x[61]

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[61] The Sandiganbayan found that these shares were distributed among the defendant corporations as follows:

STOCKHOLDERS	(ORIGINAL) NO. OF SHARES	(PRESENT*) NO. OF SHARES
Primavera Farms, Inc.	5,381,643	21,626,164
Black Stallion Ranch, Inc.	3,587,695	14,360,772
Misty Mountains Agri'l Corp.	3,587,695	14,360,772
Pastoral Farms, Inc.	3,587,695	14,350,772
Meadow Lark Plantation, Inc.	2,690,771	10,763,080
Silver Leaf Plantation, Inc.	2,690,771	10,763,080
Lucena Oil Factory, Inc.	169,174	676,696
PCY Oil Manufacturing Corp.	167,887	671,464
Metroplex Commodities, Inc.	167,777	671,104
Kaunlaran Agricultural Corp.	145,475	581,800
Redee Developers, Inc.	169,071	676,280
Agrl'l Consultancy Serv., Inc.	167,907	671,624
First United Transport, Inc.	168,963	675,848
Verdant Plantations, Inc.	145,475	581,900
Christensen Plantation Co.	169,920	675,680
Northern Carriers Corp.	167,891	671,560
Vesta Agricultural Corp.	145,475	581,900
Ocean Side Maritime Ent. Inc.	132,250	529,000
Pura Electric Company, Inc.	99,587	398,336
Unexplored Land Developers, Inc.	102,823	411,288
Punong-Bayan Housing Dev't. Corp.	132,250	529,000
Habagat Realty Development, Inc.	145,822	593,280
Spade One Resorts Corp.	147,040	588,280
Wings Resorts Corp.	104,886	419,536
Kalawakan Resorts, Inc.	132,250	529,000

5. "There are 'indications . . .' that several of the corporations listed in the complaint against Eduardo M. Cojuangco, Jr., are 'dummies' or manipulated instruments, or repositories of wealth deceitfully amassed at the expense of the People or simply fruits thereof." (*Republic v. Sandiganbayan*, 240 SCRA 376 [1995])[62]

In both the Resolution of December 10, 2004 and the Decision of November 28, 2007, the Sandiganbayan consistently pointed out the "disputed facts" by outlining the genuine factual issues, *viz.*:

DISPUTED FACTS

x x x x x x x x x

Labayug Air Terminals, Inc.	159,106	636,416
Landair Int'l. Marketing Corp.	168,965	675,856
San Esteban Dev't Corp.	167,879	670,716
Philippine Technologies, Inc.	132,250	529,000
Balete Ranch, Inc.	166,395	665,576
Discovery Realty Corp.	169,203	676,808
Archipelago Realty Corp.	167,761	671,040
Southern Service Traders, Inc.	120,480	481,916
Oro Verde Services, Inc.	132,250	529,000
Northeast Contract Traders	132,536	538,144
Dream Pastures, Inc.	159,237	676,948
LHL Cattle Corporation	183,216	676,880
Rancho Grande, Inc.	167,614	870,452
Echo Ranch, Inc.	167,897	671,584
Far East Ranch, Inc.	169,227	676,908
Southern Star Cattle Corp.	159,095	676,376
Radio Audience Developers Integrated Org., Inc.	167,787	671,104
Radyo Pilipino Corp.	167,777	671,104
TOTAL	27,198,545	108,846,948

[62] *Rollo* (G.R. No. 180702), Vol. II, pp. 831-833.

1) What are the "various sources" of funds, which the defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?

2) Whether or not such funds acquired from alleged "various sources" can be considered coconut levy funds;

3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PCA, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;

4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?[63]

A considered look at the pleadings submitted by the parties is thus imperative.

Pertinent portions of the Third Amended Complaint read:

x x x x x x x x x

4. Defendant EDUARDO M. COJUANGCO, JR., was Governor of Tarlac, Congressman of then First District of Tarlac, and Ambassador-at-Large in the Marcos Administration. He was commissioned Lieutenant Colonel in the Philippine Air Force, Reserve. Defendant Eduardo M. Cojuangco, Jr., otherwise known as the "Coconut King" was head of the coconut monopoly which was instituted by Defendant Ferdinand E. Marcos, by virtue of the Presidential Decrees. Defendant Eduardo E. Cojuangco, Jr., who was also one of the closest associates of the Defendant Ferdinand E. Marcos, held the positions of Director of the Philippine Coconut Authority, the United Coconut Mills, Inc., President and Board Director of the United Coconut Planters Bank, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc. He was also the Chairman of the Board and Chief Executive

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[63] *Rollo* (G.R. No. 166859), p. 61; (G.R. No. 180702), Vol. II, p. 833.

Officer and the controlling stockholder of the San Miguel Corporation. He may be served summons at x x x.

4.a One of the companies beneficially owned or controlled by Defendant Eduardo E. Cojuangco and/or by the individual defendants is/was the San Miguel Corporation (SMC) organized according to Philippine laws.

x x x x x x x x x

14. Defendant Eduardo Cojuangco, Jr. taking undue advantage of his association, influence and connection, acting in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and the individual defendants, embarked upon devices, schemes and stratagems, including the use of defendant corporations as fronts, to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, such as when he — misused coconut levy funds to buy out majority of the outstanding shares of stock of San Miguel Corporation in order to control the largest agri-business, foods and beverage company in the Philippines, more particularly described as follows:

(a) Having control over the coconut levy, Defendant Eduardo M. Cojuangco invested the funds in diverse activities, such as the various businesses SMC was engaged in (*e.g.* large beer, food, packaging, and livestock);

(b) He entered SMC in early 1983 when he bought most of the 20 million shares Enrique Zobel owned in the Company. The shares, worth $49 million, represented 20% of SMC;

x x x x x x x x x

(i) Mr. Eduardo M. Cojuangco, Jr. acquired a total of 16,276,879 shares of San Miguel Corporation from the Ayala group; of said shares, a total of 8,138,440 (broken into 7,128,227 Class A and 1,010,213 Class B shares) were placed in the names of Meadowlark Plantations, Inc. (2,034,610) and Primavera Farms, Inc. (4,069,220). The Articles of Incorporation of these three companies show that Atty. Jose C. Concepcion of ACCRA owns 99.6% of the entire outstanding stock. The same shareholder executed three (3) separate "Declaration of Trust and Assignment of Subscription" in favor of a BLANK assignee pertaining to his shareholdings in Primavera Farms, Inc., Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc.

(j) The same stockholder (Jose C. Concepcion), together with all the four other stockholders in the trhee (sic) named corporations, simultaneously executed Voting Trust Agreements in favor of Mr. Eduardo M. Cojuangco, Jr. over the SMC shares of stock which they acquired. In these trust deeds, Eduardo Cojuangco, Jr. undertook to hold the SMC shares in trust for the beneficial owners, and to turn over with utmost speed the dividends on the shares to the latter.

(k) The other Respondent Corporations are owned by interlocking shareholders who are likewise lawyers in the ACCRA Law Offices and had admitted their status as "nominee stockholders" only.

> (k-1) The Corporations: Agricultural Consultancy Services, Inc., Archipelago Realty Corporation, Balete Ranch, Inc., Discovery Realty Corporation, First United Transport, Inc., Kaunlaran Agricultural Corporation, Land Air International Marketing Corporation, Misty Mountains Agricultural Corporation, Pastoral Farms, Inc., Oro Verde Services, Inc., Radyo Filipino Corporation, Reddee Developers, Inc., Verdant Plantations, Inc. and Vesta Agricultural Corporation, were incorporated by lawyers of ACCRA Law Offices.
>
> (k-2) With respect to PCY Oil Manufacturing Corporation and Metroplex Commodities, Inc., they are controlled respectively by HYCO, Inc. and Ventures Securities, Inc. both of which were incorporated likewise by lawyers of ACCRA Law Offices.
>
> (k-3) The stockholders who appear as incorporators in most of the other Respondent Corporations are also llawyers (sic) of the ACCRA Law Offices, who as early as 1987 had admitted under oath that they were acting only as "nominees stockholders."

(l) These companies, which ACCRA Law Offices organized for Defendant Cojuangco to be able to control more than 60% of SMC shares, were funded by institutions which depended upon the coconut levy such as the UCPB, UNICOM, United Coconut Planters Life Assurance Corp. (COCOLIFE), among others. Cojuangco and his ACCRA lawyers used the funds from 6 large coconut oil mills and 10 copra trading companies to borrow money from the UCPB and purchase these holding companies and the SMC stocks. Cojuangco used $150 million from the coconut levy, broken down as follows:

Amount (in million)	Source	Purpose
$22.26	Oil Mills	equity in holding companies
$65.6	Oil Mills	loan to holding companies
$61.2	UCPB	loan to holding companies (164)

The entire amount, therefore, came from the coconut levy, some passing through the Unicom oil mills, others directly from the UCPB.

x x x x x x x x x

(o) Along with Cojuangco, Defendant Enrile and ACCRA also had interests in SMC, broken down as follows:

% of SMC	Owner
Cojuangco	
31.3%	coconut levy money
18%	companies linked to Cojuangco
5.2%	government
5.2%	SMC employee retirement fund
Enrile & ACCRA	
1.8%	Enrile
1.8%	Jaka Investment Corporation
1.8%	ACCRA Investment Corporation[64]

In Cojuangco's Answer to the Third Amended Complaint, he made the following material admissions:

2.01 Herein defendant admits paragraph 4 only insofar as it alleges the following:

(a) That **herein defendant has held the following positions in government**: Governor of Tarlac, Congressman of the then First District of Tarlac, Ambassador-at-Large, Lieutenant Colonel in the Philippine Air Force and **Director of the Philippine Coconut Authority**;

[64] *Rollo* (G.R. No. 180702), Vol. I, pp. 142, 148-149, 151-155.

(b) **That he held the following positions in private corporations**: **Member of the Board of Directors of the United Coconut Oil Mills, Inc**.; **President and member of the Board of Directors of the United Coconut Planters Bank**, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc.; **Chairman of the Board and Chief Executive Officer of San Miguel Corporation**; x x x

x x x x x x x x x

5.02.b. Herein defendant admits paragraph 14(b) of the complaint insofar as it is alleged therein **that <u>in 1983, he acquired shares of stocks representing approximately 20% of the outstanding capital stock of San Miguel Corporation</u>**; <u>herein defendant specifically denies that the shares of stock in SMC which he purchased belonged to Mr. Enrique Zobel</u>, **the truth being that the said shares of stock were owned by the Ayala Corporation**, of which Mr. Enrique Zobel was then Chairman and Chief Executive Officer, **and several other corporations and individuals**. <u>Herein defendant further denies the allegation, implication and insinuation, whether contained in paragraph 14(b) or in any other portion of the complaint that he acquired the aforesaid interest in San Miguel Corporation with the use of the coconut levy funds, or in any other manner contrary to law,</u> **<u>the truth being that herein defendant acquired the said shares of stock using the proceeds of loans obtained by herein defendant from various sources.</u>**

x x x x x x x x x

5.02.i. Herein defendant admits paragraph 14(i) of the complaint insofar as it is alleged therein that **he acquired the San Miguel shares registered in the name of Ayala Corporation** and that **some of said shares were registered in the names of Meadowlark Plantations, Inc. and Primavera Farms, Inc.** Herein defendant further admits that, **at the time of their incorporation, 99.6% of the said shares in said corporations were registered in the name of Atty. Jose C. Concepcion**. Herein defendant likewise admits that **Atty. Jose C. Concepcion executed three (3) separate Declarations of Trust and Assignment of Subscription in favor of an unnamed assignee pertaining to his shares in Primavera Farms, Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc**.

5.02.j. Herein defendant admits paragraph 14(j) of the complaint insofar as it is alleged therein that **Atty. Jose C. Concepcion and other registered stockholders of Primavera Farms, Inc., Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc. executed Voting Trust Agreements in favor of herein defendant over the shares of stock in SMC registered in the names of said corporations**. Herein defendant however denies that, in said deeds of trust, herein defendant "undertook to hold the SMC shares in trust for the beneficial owners, and to turn over with utmost speed the dividends received on the shares of the latter," **the truth being that herein defendant is the true, lawful and beneficial owner of the SMC shares of stock registered in the names of Primavera Farms, Inc., Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc.**

5.02.k. Herein defendant admits paragraph 14(k) inclusive of paragraphs (K-2) and (K-2), insofar as it is alleged that Agricultural Consultancy Services, Inc., Archipelago Realty Corporation, Balete Ranch, Inc., Black Stallion Ranch, Inc., Discovery Realty Corporation, First United Transport, Inc., Kaunlaran Agricultural Corporation, Landair International Marketing Corporation, Misty Mountains Agricultural Corporation, Pastoral Farms, Inc., Oro Verde Services, Inc., Radyo Filipino Corporation, Reddee Developers, Inc., Verdant Plantations, Inc., and Vesta Agricultural Corporation, Hyco, Inc. and Ventures Securities, Inc. **were incorporated by lawyers of the ACCRA Law Offices**. Herein defendant, however, denies, for lack of knowledge or information sufficient to form a belief as to the truth thereof, paragraph 14(k-3) of the complaint to the effect that "[t]he stockholders who appear as incorporators in most of the other Respondent Corporations are also lawyers of the ACCRA Law Offices, who as early as 1987 had admitted under oath that they were acting only as "nominee stockholders."

5.02. l. Herein defendant denies paragraph 14(l) of the complaint, **the truth being that the companies incorporated in his behalf by the ACCRA Law Office cumulatively own less than 20% of the outstanding capital stock of SMC**, that herein defendant did not use the coconut levy funds, or any part thereof, to acquire his shareholdings in SMC.

x x x x x x x x x

5.02.o. **Herein defendant admits paragraph 14(o) of the complaint insofar as it is alleged therein that herein defendant**

and/or the corporations affiliated with him own approximately 18% of the outstanding common stock of SMC. Herein defendant however denies that he owns or has an interest in the SMC shares acquired with the use of 'coconut levy money,' those owned by 'government' or those owned by the 'SMC employee retirement fund,' the truth being that herein defendant has no interest in those shareholdings. Herein defendant likewise denies the allegations in paragraph 14(o) of the complaint in regard the shareholdings in SMC of defendant Juan Ponce Enrile, Jaka Investments Corporation and ACCRA Investment Corporation for lack of knowledge or information sufficient to form a belief as to the truth thereof.[65] (emphasis and underscoring supplied)

Similarly, in their Answer to the Third Amended Complaint, the Cojuangco companies made the following material admissions:

5.02. Insofar as it refers to the other defendants, herein defendants deny paragraph 14 of the complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Insofar as it refers to herein defendants, they deny paragraph 14 of the complaint, the truth being that herein defendants have not been used as fronts, whether by defendant Eduardo Cojuangco, Jr. or any other defendant, for the purposes stated therein. The shares of stock in San Miguel Corporation (SMC) registered in the names of herein defendants were not acquired with the use of coconut levy funds.

5.02.b. Herein defendants deny paragraph 14(h) the truth being that herein defendant corporations were all duly incorporated and constituted, and their assets acquired, in accordance with the Corporation Code and all pertinent laws.

5.02.c. Herein defendants deny paragraph 14(i) of the complaint for lack of knowledge or information sufficient to form a belief except in so far as it is alleged that **they are the registered owners of certain shares of stock in San Miguel Corporation**.

x x x x x x x x x

5.02.e. Herein defendants specifically deny paragraph 14(l) of the complaint in so far as it alleges that shares of stock in San Miguel

[65] *Rollo* (G.R. No. 180702), Vol. II, pp. 592-593, 597-598, 600-603.

Corporation of defendants were acquired with the use of coconut levy funds, the truth being that **whatever funds were used to acquire shares of stock in San Miguel Corporation belonged to them**; the rest of the allegations are denied for lack of knowledge or information sufficient to form a belief.

x x x x x x x x x

5.02.h. Herein defendants admit paragraph 14(o) of the complaint insofar as it is alleged therein that **herein defendants own approximately 18% of the outstanding common stock of SMC**. Herein defendants however deny they own or have interest in the SMC shares acquired with the use of 'coconut levy fund,' the truth being that herein defendants have no interest in those shareholdings. Herein defendants likewise deny the allegations in paragraph 14(o) of the complaint in regard the shareholdings in SMC of defendant Juan Ponce Enrile, Jaka Investment Corporation, and ACCRA Investment Corporation for lack of knowledge or information sufficient to form a belief as to the truth thereof.[66] (underscoring and emphasis supplied)

Sources of Funds to Acquire the subject SMC shares

The Sandiganbayan's finding that the "'various sources' of funds" that respondents used to acquire the subject SMC shares is a disputed fact is inaccurate.

As listed in the undisputed facts, the source was already particularly identified as "loans," as confirmed by the exact phrase employed by Cojuangco. In his Answer, Cojuangco denied that he acquired the SMC shares "with the use of coconut levy funds, or in any other manner contrary to law, the truth being that herein defendant acquired the said shares of stock using the **proceeds of loans** obtained by herein defendant **from various sources.**"[67] His *affirmative defense*, therefore, is that the funds came from a different (not coconut levy funds) source in the nature of loans. Cojuangco companies' Answer, meanwhile,

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[66] *Id.* at 616-618.

[67] Cojuangco's Answer, *rollo* (G.R. No. 180702), Vol. II, p. 597.

avers that "whatever funds were used to acquire [the SMC shares] belonged to them."[68] Their *affirmative defense* points to **privately owned funds** as the source of payment of the purchase price. As will be explained later, **these affirmative defenses need to be proved, yet Cojuangco, *et al.* did not present any evidence.**

The Sandiganbayan's finding totally disregards the statements of respondents in their joint Pre-Trial Brief that they obtained loans and credit advances from the UCPB and CIIF Oil Mills for the purchase of the subject SMC shares. Consider Cojuangco and the Cojuangco companies' statements in their Pre-Trial Brief:

IV.
PROPOSED EVIDENCE

x x x x x x x x x

4.01 x x x Assuming, however, that plaintiff presents evidence to support its principal contentions, defendant's evidence in rebuttal would include testimonial and documentary evidence showing: a) the ownership of the shares of stock prior to their acquisition by defendants (listed in Annexes 'A' and 'B'); b) the consideration for the acquisition of the shares of stock by the persons or companies in whose names the shares of stock are now registered; and c) **the source of the funds used to pay the purchase price**.

4.02 **Herein defendants intend to present the following evidence**:

a. Proposed Exhibits __, __, __,

Records of San Miguel Stock Transfer Service Corporation which would show from whom the shares of stock listed in Annexes "A" and "B" were acquired, the Certificates of Stocks which were cancelled as a result of the transactions, and the resulting Certificates of Stock in the names of the present stockholders listed in Annexes "A" and "B", and upon whose instructions the transfers and the corresponding cancellation of Certificates of Stock and the issuance of new Certificates of Stock were made;

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[68] Cojuangco Companies' Answer, *rollo* (G.R. No. 180702), Vol. II, p. 617.

b. Proposed Exhibits __, __, __,

Records of the United Coconut Planters Bank which would show borrowings of the companies listed in Annexes "A" and "B", or companies affiliated or associated with them, which were **used to source payment of the shares of stock of the San Miguel Corporation subject of this case**.

4.03 **Witnesses**.

(a) Defendant Eduardo M. Cojuangco, Jr., who shall testify on the acquisition of the SMC shares and the sources of the funds utilized in the acquisition of the same. He will also testify on the injury that he has suffered as a consequence of the sequestration of the SMC shares listed in Annex "B" and the filing of the present suit.

(b) **A representative of the United Coconut Planters Bank who will testify in regard the loans which were used to source the payment of the purchase price of the SMC shares of stock**.

(c) **A representative of the CIIF Oil Mills who will testify in regard the loans or credit advances which were used to source the payment of the purchase price of the SMC shares of stock.**

d) A representative of San Miguel Stock Transfer Service Corporation who will testify on the records referred to in paragraph 4.02(a).

4.04. Herein defendants reserve the right to present such other evidence as may be warranted during the course of the trial of the above-entitled case.[69] (underscoring and emphasis supplied)

Evidently, the identity of the various sources in funding the stock purchase became pronounced during the pre-trial. **The statements are clear admission on respondents' part that the purchase price of the subject SMC shares were paid, either in whole or in part, out of loans and credit advances from the UCPB and CIIF Oil Mills**.

Had there been other sources, Cojuangco and the Cojuangco companies would have readily mentioned them at the pre-trial stage where all documents intended to be presented during trial

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[69] *Rollo* (G.R. No. 180702), Vol. II, pp. 634-637.

with a statement of the purposes of their offer[70] should be stated. The reservation to present other evidence was, it bears noting, conditioned only on *what may be warranted in the course of trial*.

Respondents having admitted that such loans and credit advances funded the acquisition of the SMC shares, the plaintiff-Republic did not have to present proof thereof anymore. For judicial admissions do *not* require proof[71] to establish that UCPB loans and CIIF Oil Mills credit advances financed the stock purchase transaction of subject SMC shares.

The majority holds that Cojuangco, *et al.*'s joint Pre-Trial Brief did not submit or disclose what these loans were, since they were merely placed under "Proposed Evidence" which were not yet intended as admissions of any fact.

While the majority agrees that certain statements in a pre-trial brief can be the source of admissions, it limits them to those clearly identified by a submitting party as expressly admitted facts.

I do take exception to this hard-and-fast rule.

Bearing in mind the **purpose** of pre-trial which is full disclosure to avoid surprise, *Cojuangco, et al.*'s Pre-Trial Brief undoubtedly presents in a capsule the defense's version of the case.

In *Republic v. Sarabia*,[72] the Court found further enlightenment from a party's Pre-trial Brief in arriving as to the precise time at which just compensation should be fixed (*i.e.*, as of the time of actual taking of possession by the expropriating entity), which was found to be sometime in 1956. The Court therein did not stop with the admissions in the Answer but **appreciated the submissions in the Pre-Trial Brief** to buttress the same. Aside from lifting those under the sub-heading of "Admissions," it

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[70] ADMINISTRATIVE CIRCULAR No. 3-99 (January 15, 1999).

[71] RULES OF COURT, Rule 129, Sec. 1.

[72] G.R. No. 157847, August 25, 2005, 468 SCRA 142.

considered those under "Brief Statement of Respondent's Claim" that presented the proposed version of the party *without the benefit of having elicited an acceptance of the stipulation from the other party.* The pertinent portion of that decision reads:

Besides, **respondents no less averred in their Pre-Trial Brief:**

I. BRIEF STATEMENT OF THE RESPONDENTS' CLAIM

1. That the defendants are the owners of that certain parcel of land located at Pook, Kalibo, Aklan, Philippines, which is covered by Original Certificate Title No T-1559-6. A portion of the land has been occupied by the plaintiff **for many years now which portion of land is indicated on the sketch plan which is marked Annex 'B' of the complaint**.

x x x x x x x x x

I1. ADMISSION

x x x x x x x x x

2. That this land has been in the possession of the plaintiff **for many years** now without paying any rental to the defendants. (Emphasis supplied)

x x x x x x x x x

Surely, private respondents' admissions in their Answer and Pre-Trial Brief are judicial admissions which render the taking of the lot in 1956 conclusive or even immutable. And well-settled is the rule that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. A judicial admission is an admission made by a party in the course of the proceedings in the same case, for purposes of the truth of some alleged fact, which said party cannot thereafter disprove. Indeed, an admission made in the pleading cannot be controverted by the party making such admission and are conclusive as to him, and that all proofs submitted by him contrary thereto or inconsistent therewith should be ignored whether objection is interposed by a party or not.[73] (underscoring supplied)

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[73] *Id.* at 149-150.

Indeed, the Rules re-echo that "[t]he parties are bound by the representations and statements in their respective pre-trial briefs."[74] In fact, in the present case, the Sandiganbayan's Pre-Trial Order reminded the parties:

> x x x At this stage, the plaintiff then reiterated its earlier request to consider the pre-trial terminated. The Court sought the positions of the other parties, whether or not they too were prepared to submit their respective positions on the basis if what was before the Court at pre-trial. All of the parties, in the end, have come to an agreement that they were submitting their own respective positions for purposes of pre-trial on the basis of the submissions made of record. (underscoring supplied)

One such admission is the submission in Cojuangco, *et al.*'s joint Pre-Trial Brief that revealed the **identity of the loans as advances from CIIF Oil Mills and loans from UCPB.** They are bound by this representation in their Pre-Trial Brief, at least, insofar as the basic fact that the borrowings were obtained from CIIF Oil Mills and UCPB.

Cojuangco, *et al.* are not bound, of course, to ventilate during trial the full details of these loan transactions. As correctly stated by the majority opinion, the witnesses and documents might or might not be presented at all. The Republic, meanwhile, asserts that the specific details thereof are no longer necessary to prove its case.

The express condition that the plaintiff presents first its evidence is inherent in every proceeding. In fact, a defendant may file a demurrer to evidence after the presentation of plaintiff's evidence. The option to avail of the opportunity to present defense evidence is the call of the defendant, but he must be mindful of whatever consequences an omission thereof may present, which will be discussed hereunder.

It is also observed that during the pre-trial conference, the Sandiganbayan was stuck in belaboring the extraction of "specifics

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[74] A.M. No. 03-1-09-SC (July 13, 2004) "Rule on Guidelines to be Observed by Trial court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures."

of the identification of these wrongs or omissions."[75] If there was a need for a definite statement of matters which were not averred with sufficient particularity, it should have been the defendants who filed at the outset a motion for a bill of particulars. That all the defendants were able to intelligently prepare their respective responsive pleadings can only mean that the allegations of the Complaint were sufficiently clear to them.

The Sandiganbayan could have proceeded in accomplishing the other objectives of a pre-trial and allowing the parties to lay down their available evidence, whatever these may be, without pre-judging the inadequacy and competency of their evidence or even if the sets of evidence were far from what the Sandiganbayan perceived to be ideal. It, however, even went into a premature determination of the probative value of COA reports which were yet to be offered and weighed.

I commend the Sandiganbayan for its vigilance in facilitating the pre-trial. The Sandiganbayan can look behind its frustration and remonstration, and console itself with the realization that, at the end of the day, it can only do so much in conducting a perfect pre-trial. Ultimately, how to advance the theory of the case or defense rests on the parties and their counsels.

Without the Sandiganbayan anticipating, the Republic perhaps took that conscious and cautious step in proceeding forward and submitting that there was no need, after all, to present documentary and testimonial evidence in light of the *judicial admissions* in its favor and the *prima facie* circumstances laid down by jurisprudence, of which the Court can take judicial notice, that could already sufficiently paint the entire cause of action, absent any refuting evidence coming from the defendants.

Judicial admissions are **generally considered conclusive** to the concerned party. Certain jurisprudence, however, provides the admitting party some **leeway to vary or override such admissions,** provided the matter is identified as an issue and the admitting party presents contrary evidence during trial. In one case, it was held:

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[75] Sandiganbayan's Pre-Trial Order.

In addition, despite Urdaneta City's judicial admissions, the trial court is still given leeway to consider other evidence to be presented for said admissions may not necessarily prevail over documentary evidence, *e.g.*, the contracts assailed. A party's testimony in open court may also override admissions in the Answer.[76] (underscoring supplied)

On the premise that the admissions were not conclusive prior to trial, Cojuangco, *et al.*, however, did not go to trial even to attempt to modify their earlier judicial admissions. Hence, their judicial admissions eventually solidified.

To the extent that the stock acquisition was **exclusively** funded by such loans and credit advances, however, the question cannot be immediately resolved in favor of the plaintiff via a summary judgment.

In the Resolution assailed in G.R. No. 166859, the Sandiganbayan committed no grave abuse of discretion in giving respondents — the party against whom the motion for summary judgment was directed — the benefit of all favorable inferences in viewing the evidence. Any doubt as to the existence of an issue of fact must be resolved against the movant.[77]

In G.R. No. 180702, however, the Sandiganbayan *erred* when it still adopted the same position, despite the conduct or opportunity of trial. Particularly, the Sandiganbayan erred when it still counted on the plaintiff to prove the already **admitted fact** that such loans and credit advances funded, in whole or in part, the acquisition of subject SMC shares. Notably, respondents *failed to negate, vary or override*, on grounds allowed by the rules, their *standing admission*. **That such loans and credit advances fully or partially bankrolled the stock purchase can thus no longer be contradicted.**

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[76] *Asean Pacific Planners v. City of Urdaneta*, G.R. No. 162525, September 23, 2008, 566 SCRA 219, 235; *vide* RULES OF COURT, Rule 132, Sec. 2.

[77] *Garcia v. Court of Appeals*, G.R. No. 117032, July 27, 2000, 336 SCRA 475, 481.

On the exclusivity of the funds, it is not in the plaintiff's interest to prove the allegation that private funds partly financed the stock purchase. Conversely stated, the plaintiff-Republic may not be expected to prove the **negative assertion** that no other source of funding was utilized to buy the subject SMC shares. It need not go forward to prove that respondents did not use private funds. That the stock purchase was not exclusively funded by such loans and credit advances is a matter of defense on the part of respondents, upon which case the burden of evidence shifts.[78]

Herrera v. Court of Appeals[79] teaches that **it is not incumbent upon the plaintiff to adduce positive evidence to support a negative averment** (*i.e.*, acquired *without* using private funds) the truth of which is fairly indicated by established circumstances and **which, if untrue, could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control**.

Even assuming *arguendo* that "without using private funds" is elemental to the cause of action of the plaintiff who must bear the burden of proof, *Philippine Savings Bank v. Geronimo*[80] instructs that "**negative allegations need not be proved** even if essential to one's cause of action or defense **if they constitute a denial of the existence of a document the custody of which belongs to the other party**."[81]

This category of relevant facts that need not be proven by evidence is identified as *"facts peculiarly within the knowledge of the opposite party*."[82]

Cojuangco, *et al.* could have simply presented in evidence documents under their custody, if any, to show that other financial

[78] *Vide People v. Quebral*, 68 Phil. 564, 567 (1939).

[79] 427 Phil. 577, 590-591 (2002).

[80] G.R. No. 170241, April 19, 2010, 618 SCRA 368.

[81] *Id.* at 376.

[82] *Vide Republic v. Vda. De Neri*, G.R. No. 139588, March 4, 2004, 424 SCRA 676, 692-693.

resources were used to finance the stock purchase, which may have qualified, on allowable grounds, their earlier judicial admission and accordingly crumbled the plaintiff's case into fractions.

Whichever way of looking at the matter of "non-usage or usage of private funds" — either as a "negative averment" on the part of the Republic or an "affirmative defense" on the part of Cojuangco, *et al.* — the bottom line remains the same: the burden of evidence that there were other loans that partly funded the purchase of the SMC shares was borne by Cojuangco, *et al.*, failing which is fatal to them.

It bears reiterating that this opportunity for Cojuangco, *et al.* to (i) disprove the Republic's **negative averment** that no private funds were used, or (ii) otherwise prove the defense's **affirmative allegation** that private funds or partly private funds were used explains why it was proper to deny the Republic's motion for summary judgment and go to trial. Cojuangco, *et al.* opted not to avail of that opportunity. **Consequently, the negative averment stands and the affirmative defense fails.**

This same blunder was committed by Cojuangco in the case of *Republic v. Estate of Hans Menzi*[83] wherein he purposely skipped the presentation of his defense evidence and consequently failed to prove his affirmative allegations. The Court therein rejected Cojuangco's contention that his allegation that the shares were registered in his name as a nominee of Hans Menzi was not an affirmative defense but a specific denial, as such the allegation need not be proven unless the Republic presents adequate evidence to prove its case.

> It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable.

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[83] G.R. No. 152578, November 23, 2005, 476 SCRA 20.

The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — *i.e.*, an "avoidance" of the claim.

In the instant case, Cojuangco's allegations are in the nature of affirmative defenses which should be adequately substantiated. He did not deny that Bulletin shares were registered in his name but alleged that he held these shares not as nominee of Marcos, as the Republic claimed, but as nominee of Menzi. He did not, however, present any evidence to support his claim and, in fact, filed a Manifestation dated July 20, 1999 stating that he "sees no need to present any evidence in his behalf."[84] (emphasis and underscoring supplied)

In the same manner, Cojuangco admitted in the present case that he purchased the SMC shares of stock but averred that he used the proceeds of certain loans to finance the purchase of the SMC shares. This defense by way of avoidance of the plaintiff's claim could have buttressed the defendants' claim that not a single peso of public money was used in buying the shares. Cojuangco, however, took a similar route in the present case, despite the myriad of admissions, judicial notices, and *prima facie* circumstances that, absent any varying evidence, consequently fortified the Republic's case. Indeed, "**in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, *not* by who is the plaintiff or the defendant**."[85]

After the trial (or the lack thereof despite the trial settings), it became clear that the **borrowings from CIIF Oil Mills and UCPB exclusively funded the purchase of the SMC shares.**

COCONUT LEVY FUNDS AS PUBLIC FUNDS

For a clear picture of the genesis of the coconut levy funds, the historical narration in the 1989 case of *Philippine Coconut*

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

[85] *Republic v. Vda. De Neri*, *supra* note 82 at 692.

Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government[86] bears recalling, *viz.*:

The COCONUT LEVY FUNDS:

The sequestration of the corporations and the other acts complained of were undertaken by the PCGG preparatory to the filing of suit in the Sandiganbayan against Marcos and his associates for the illicit conversion of the coconut levy funds, purportedly channeled through the COCOFED and the other sequestered businesses, into private pelf. These funds fall into four general classes, *viz.*: (a) the Coconut Investment Fund created under R.A. 6260 (effective June 19, 1971); (b) the Coconut Consumers Stabilization Fund created under PD 276 (effective August 20, 1973); (c) the Coconut Industry Development Fund created under PD 582 (effective November 14, 1974); and (d) the Coconut Industry Stabilization Fund created under P.D. 1841 (effective October 2, 1981).

The Coconut Investment Fund (CIF):

The Coconut Investment Fund, or CIF, was put up in 1971 by R.A. 6260 which declared it to be the national policy to accelerate the development of the coconut industry through the provision of adequate medium and long term financing for capital investment in the industry. A levy of ₱0.55 was imposed on the first domestic sale of every 100 kilograms of copra or equivalent coconut product, fifty centavos (₱0.50) of which accrued to the CIF. The Philippine Coconut Administration (or PHILCOA) received three centavos (₱0.03) of the five remaining, and the balance was placed "at the disposition of the recognized national association of coconut producers with the largest x x x membership"— which association was declared by PHILCOA to be petitioner COCOFED.

The CIF was to be used exclusively to pay for the Philippine Government's subscription to the capital stock of the Coconut Investment Company (CIC), a corporation with a capitalization of ₱100,000,000.00 created by the statute to administer the Fund, as has already been stated, and to invest its capital in financing "agricultural, industrial or other productive (coconut) enterprises" qualified under the terms of the statute to apply for loans with the CIC. The State was to initially subscribe to CIC's capital stock "for

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[86] G.R. No. 75713, October 2, 1989, 178 SCRA 236.

and on behalf of the coconut farmers," to whom such shares were supposed to be transferred "upon full payment (with the collections on the levy) of the authorized capital stock x x x or upon termination of a ten-year period from the start of the collection of the levy x x x, whichever comes first." The scheme, in short, called for the use of the CIF — funds collected mainly from coconut farmers– to pay for the CIC shares of stock to be subscribed by the Government and held by it until the levy was lifted, whereupon the Government was to "convert" the receipts issued to the farmers (as evidence of payment of the levy) "into shares of stock"— this time in the farmers' names — in the new, private corporation to be formed by them at such time, conformably with the provisions of the law.

The levy imposed by R.A. 6260 was collected from 1972 to 1982.

The Coconut Consumers Stabilization Fund (CCSF)

P.D. 276 established a second fund on August 20, 1973, barely a year after the creation of the CIF. The decree imposed a "Stabilization Fund Levy" of fifteen pesos (₱15.00) on the first sale of every 100 kilograms of *copra resecada* or equivalent product. The revenues were to be credited to the Coconut [Consumers] Stabilization Fund (CCSF) which was to be used to subsidize the sale of coconut-based products at prices set by the Price Control Council, in order to stabilize the price of edible oil and other coconut oil-based products for the benefit of consumers. The levy was to be collected for only one year. The CCSF however became a permanent fund under PD 414.

The Coconut Industry Development Fund (CIDF):

On November 14, 1974, PD 582 was promulgated setting up yet another "permanent fund x x (this time to) finance the establishment, operation and maintenance of a hybrid coconut seednut farm x x x (and the implementation of) a nationwide coconut replanting program" "using precocious high-yielding hybrid seednuts x x x to (be) distribute(d), x x x free, to coconut farmers." The fund was denominated the Coconut Industry Development Fund, or the CIDF. Its initial capital of ₱100 million was to be paid from the CCSF, and in addition to this, the PCA was directed to thereafter remit to the fund "an amount equal to at least twenty centavos (₱0.20) per kilogram of *copra resecada* or its equivalent out of its current collections of the coconut consumers stabilization levy." The CIDF was assured

of continued contribution from the permanent levy in the same amount deemed to be "automatically imposed" in the event of the lifting of the Stabilization Fund Levy.

The Coconut Industry Investment Fund (CIIF)

The various laws relating to the coconut industry were codified in 1976; promulgated on October 21 of that year was PD 961 or the "Coconut Industry Code," which later came to be known as the "Revised Coconut Industry Code" upon its amendment by PD 1468, effective June 11, 1978. The Code provided for the continued enforcement of the Stabilization Fund Levy imposed by PD 276 and for the use of the CCSF and the CIDF for substantially the same purposes specified by the enactments ordaining their creation.

A new provision was however inserted in the Code, authorizing the use of the balance of the CIDF not needed to finance the replanting program and other authorized projects, for the acquisition of "shares of stock in corporations organized for the purpose of engaging in the establishment and operation of industries, x x x commercial activities and other allied business undertakings relating to coconut and other palm oil indust(ries)." From this fund thus created, the Coconut Industry Investment Fund or the CIIF, were purchased the shares of stock in what have come to be known as the "CIIF companies"— the sequestered corporations into which said CIIF (Coconut Industry Investment Fund) was heavily invested after its creation.

The Coconut Industry Stabilization Fund (CISF): (Formerly CCSF)

The collection of the CCSF and the CIDF was suspended for a time in virtue of PD 1699. However, on October 2, 1981, PD 1841 was issued reviving the levies and renaming the CCSF the Coconut Industry Stabilization Fund, or the CISF, to which accrued the new collections. The impost was in the amount of ₱50.00 for every 100 kilos of *copra resecada* or equivalent product delivered to exporters and other copra users. The funds collected were to be apportioned among the CIDF, the COCOFED, the PCA, and the "bank acquired for the benefit of the coconut farmers under PD 755" referring to the United Coconut Planters Bank or the UCPB.

The AGENCIES INVOLVED:

As may be observed, **three agencies played key roles in the collection, management, investment and use of the coconut levy**

funds: (a) the Philippine Coconut Authority (PCA), formerly the Philippine Coconut Administration or the PHILCOA; (b) the COCOFED; and (c) the UCPB. Charged with the duty to "receive and administer the funds provided by law," the Philippine Coconut Authority or the PCA was created on June 30, 1973 by P.D. 232 to replace and assume the functions of (1) the Philippine Coconut Administration or PHILCOA (which had been established in 1954), (2) the Coconut Coordinating Council (CCC), and (3) the Philippine Coconut Research Institute (PHILCORIN). By virtue of the Decree, the PCA took over the collection of the CIF Levy under RA 6260 in 1973, while subsequent statutes, to wit, PD 276 (in relation to PD 414), PD 582, and PD 1841, empowered it specifically to manage the CCSF, the CIDF, and the CISF, from the time of their creation. Under the laws just mentioned, the PCA, as the government arm that "formulate(s) x x x (the) general program of development for the coconut x x x and palm oil indust(ries)," is allotted a share in the funds kept in its trust. Its governing board is composed of members coming from the public and private sectors, among them representatives of COCOFED.

The Philippine Coconut Producers Federation, Inc. or the COCOFED, as the private national association of coconut producers certified in 1971 by the PHILCOA as having the largest membership among such producers, receives substantial portions of the coconut funds to finance its operating expenses and socio-economic projects. R.A. 6260 entrusted it with the task of maintaining "continuing liaison with the different sectors of the industry, the government and its own mass base." Its president sits on the governing board of the PCA and on the Philippine Coconut Consumers Stabilization Committee, the agency assisting the PCA in the administration of the CCSF. It is also represented in the Board of Directors of the CIC and of two (2) CIIF companies COCOMARK (the COCOFED Marketing Corporation) and COCOLIFE (the United Coconut Planters' Life Insurance Co.).

The United Coconut Planters Bank (or the UCPB) is a commercial bank acquired "for the benefit of the coconut farmers" with the use of the Coconut Consumers Stabilization Fund (CCSF) in virtue of P.D. 755, promulgated on July 29, 1975. The Decree authorized the Bank to provide the intended beneficiaries with "readily available credit facilities at preferential rates." It also authorized the distribution of the Bank's shares of stock, free, to the coconut farmers; and some 1,405,366 purported recipients have been listed as UCPB stockholders as of April 10, 1986.

> The UCPB was thereafter empowered by PD 1468 to "(make) investments for the benefit of the coconut farmers" using that part of the CIDF referred to as the CIIF. Thus were organized the "CIIF companies" subject of the sequestration orders herein assailed. As in the case of the shares of stock in the UCPB, the law provided for the "equitable distribution" to the coconut farmers, free, of the investments made in the CIIF companies. Among the corporations in which the UCPB has come to have substantial shareholdings are the COCOFED Marketing Corporation (COCOMARK), United Coconut Planters' Life Insurance (COCOLIFE) GRANEX, ILICOCO, Southern Island Oil Mill, Legaspi Oil of Davao City and of Cagayan de Oro City, Anchor Insurance Brokerage, Inc., Southern Luzon Coconut Oil Mills, and San Pablo Oil Manufacturing Co., Inc. Some of these corporations in turn acquired UCPB shares of stock as well as shareholdings in the San Miguel Corporation.[87] (emphasis and underscoring supplied)

The foregoing historical account has settled that **UCPB and CIIF Oil Mills owe their existence to the coconut levy funds and the martial law issuances**.[88] The Court went on in the same case to pronounce:

> **The utilization and proper management of the coconut levy funds, raised as they were by the State's police and taxing powers, are certainly the concern of the Government.** It cannot be denied that it was the welfare of the entire nation that provided the prime moving factor for the imposition of the levy. It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population but also of export earnings the sustained growth of which is one of the imperatives of economic stability. **The coconut levy funds are clearly affected with public interest. Until it is demonstrated satisfactorily that they have legitimately become private funds, they must *prima facie* and**

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[87] *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government*, G.R. No. 75713, October 2, 1989, 178 SCRA 236, 240-246.

[88] Vide *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25, 54.

by reason of the circumstances in which they were raised and accumulated be accounted subject to the measures prescribed[.][89] (emphasis and underscoring supplied)

Still in the same case,[90] the Court held that "[t]he coconut levy funds being clearly affected with public interest, it follows that corporations formed and organized from those funds, and **all assets acquired therefrom**, could also be regarded as **'clearly affected with public interest.'**"

In the 2001 case of *Republic v. COCOFED*,[91] the Court even categorically stated that "[t]he coconut levy funds are not only affected with public interest; **they are, in fact, *prima facie* public funds**."

Once more, in the 2007 case of *Republic v. Sandiganbayan (First Division)*,[92] the Court recapitulated:

> Opinions had, for some time, been divided as to the nature and ownership of a fund with public roots but with private fruits, so to speak. The Court, however, veritably wrote *finis* to both issues in at least seven (7) ill-gotten cases decided prior to the filing of the present petition in 1995, and in several more subsequent cases, notably in *Republic v. Cocofed* where the Court declared **the coconut levy fund as partaking the nature of taxes, hence is not only affected with public interest, but "are in fact *prima facie* public funds**."
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> In *Republic v. COCOFED*, the Court observed that **the lifting of sequestration in coconut levy companies does not relieve the holders of stock in such companies of the obligation of proving how that stock had been legitimately transferred to private ownership**. x x x[93] (emphasis and underscoring supplied)

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[89] *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government*, *supra* note 87 at 252-253.

[90] *Supra* note 7, February 16, 1993 Resolution.

[91] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

[92] G.R. No. 118661, January 22, 2007, 512 SCRA 25, 28, 53.

[93] *Id.* at 28, 53.

Since the UCPB was **acquired** by the government using the coconut levy funds,[94] and "all assets acquired therefrom" are *prima facie* public in character, it follows that the coco levy funds remained public in character upon their transfer, pursuant to Presidential Decree (P.D.) No. 755,[95] from the Philippine Coconut Authority to the UCPB. The funds remained in the government's possession throughout the entire transaction.

UCPB and CIIF Oil Mills, all of which are coconut levy companies, had financed the purchase by respondents of the subject SMC shares. Undeniably, the subject SMC shares can be inescapably treated as fruits of funds that are *prima facie* public in character. *Have the subject SMC shares, as the by-product of the proceeds of the loan and credit advances, legitimately become private in character?*

Given the Court's pronouncement that coconut levy funds are *prima facie* public in nature, the holder of shares of stock that trace their roots from such funds must, in light of the immediately-quoted portion of the Court's decision in the 2007 case of *Republic v. Sandiganbayan (First Division),* overcome the *prima facie* presumption or otherwise prove that the shares are legitimately privately owned.

In view of that opportunity that was yet to be availed by respondents during trial, the Sandiganbayan exercised sound discretion in denying the plaintiff's motion for summary judgment by the assailed Resolution in G.R. No. 166859. A court, when confronted with this situation, is justified in not granting a summary judgment. This marked difference provides an alert tab for courts to proceed to trial.

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[94] The Court, indeed, has already made the categorical declaration in *COCOFED v. PCGG* (G.R. No. 75713, October 2, 1989, 178 SCRA 236), reiterated in *Republic v. COCOFED* (G.R. Nos. 147062-64, December 14, 2001; 372 SCRA 462), that the UCPB was acquired with the use of the Coconut Consumers Stabilization Fund, by virtue of P.D. 755 (1975).

[95] APPROVING THE CREDIT POLICY FOR THE COCONUT INDUSTRY AS RECOMMENDED BY THE PHILIPPINE COCONUT AUTHORITY AND PROVIDING FUNDS THEREFOR.

The same posture cannot stand, however, with respect to the Sandiganbayan's subsequent Decision of November 28, 2007, challenged in G.R. No. 180702, wherein respondents already abstained from presenting countervailing evidence after affording them the chance. In other words, Cojuangco, *et al.* failed to overcome the *prima facie* public character of the nature of the SMC shares as fruits of pubic funds.

Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment.[96] Upon the plaintiff in a civil case, the burden of proof never parts, though in the course of trial, once the plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case; otherwise, a verdict must be returned in favor of the plaintiff.[97] It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of trial.[98]

The term *prima facie* evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts.[99] *Prima facie* means it is "sufficient to establish a fact or raise a presumption unless disproved or rebutted."[100]

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[96] *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, G.R. No. 147039, January 27, 2006, 480 SCRA 314, 322.

[97] *Parel v. Prudencio*, G.R. No. 146556, April 19, 2006, 487 SCRA 405, 418-419, citing *Jison v. CA*, 350 Phil. 138, 173 (1998).

[98] *Vide Capitol Wireless, Inc. v. Balagot*, G.R. No. 169016, January 31, 2007, 513 SCRA 672, 679, citing *Bautista v. Sarmiento*, No. L-45137, September 23, 1985, 138 SCRA 587, 593.

[99] *Bautista v. Court of Appeals*, G.R. No. 143375, July 6, 2001, 360 SCRA 618, 627.

[100] *BLACK'S LAW DICTIONARY* (8th ed., 2004), p. 1228.

In fine, plaintiff having shown that the SMC shares came into fruition from coco levy funds that are *prima facie* public funds, it was incumbent upon respondents to go forward with contradicting evidence. *This they did not do*.

Respondents merely opted to raise a question of law, the resolution of which the Sandiganbayan erroneously evaded in its Decision. They maintain that the proceeds of the loan belonged to them in view of the nature of a loan, citing Civil Code provisions that a person who receives a loan of money acquires ownership thereof. They explain that the money loaned once granted belongs in ownership to the borrower who has the obligation only to pay back the amount.

Articles 1933 and 1953 of the Civil Code read:

Art. 1933. — By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.

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Art. 1953. — A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

Respondents posit that an implied trust[101] wherein the price of the property bought is "paid by another" could not arise

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[101] Under Article 1448 of the Civil Code, which reads: There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. x x x.

since the borrower, in a loan contract involving a fungible object like money, acquires ownership of money.

Respondents' characterization of the legal complexion of the transaction does not lie.

First, the Sandiganbayan case is not a simple collection case for the return of the very same series of money lent. *Second*, respondents' position presupposes that there is nothing illegal, invalid or improper in the grant of the loan. *Third*, respondents' position limits the depiction of a trust relationship to only one type.

Executive Order No. 1[102] issued on February 28, 1986 states:

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SECTION 2. The [PCGG] shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of **all business enterprises and entities owned or controlled by them, during his administration**, directly or through nominees, **by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship**. (emphasis and underscoring supplied)

Executive Order No. 2[103] issued on March 12, 1986 states:

x x x x x x x x x

WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife,

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[102] CREATING THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT.

[103] Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated By Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees.

Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or **as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines** or any of its branches, instrumentalities, enterprises, banks or financial institutions, **or by taking undue advantage of their office, authority, influence, connections or relationship**, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;

x x x x x x x x x

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, hereby;

x x x x x x x x x

(4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine **whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines** or any of its branches, instrumentalities, enterprises, banks or financial institutions, **or by taking undue advantage of their official position, authority**, **relationship**, **connection or influence** to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines.

x x x x x x x x x (emphasis and underscoring supplied)

E.O. No. 2 describes ill-gotten assets as, *inter alia*, shares of stock acquired through ***or*** as a result of the improper or illegal use of or the conversion of funds or properties owned by the Government or its branches, instrumentalities, enterprises, banks or financial institutions.

The scope of inquiry on *ill-gotten* shares of stock is not restricted to those that were personally "acquired through" public funds in the form of a simple direct purchase which, crude and

unsophisticated it may seem, is illegal *per se*. Having conceivably taken into account the ingenious and "organized pillage"[104] perpetrated by the Marcos regime, E.O. No. 2 saw it fit to include those that were "acquired as a result of the improper or *illegal* use of" public funds. Notably, E.O. No. 2 covers acquisitions resulting not only from illegal use but also from *improper* use of public funds or properties, not to mention *conversion* thereof.

That the law includes funds from government banks and financial institutions bolsters this conclusion and readily negates respondents' vivid illustrations of bank loan transactions.

Respondents' position only attempts to explain that the subject SMC shares were not directly *acquired through* public funds, but it does not negate the other modes of acquisition (*i.e.*, acquired *as a result of the improper or illegal use* or *conversion* of public funds) which could take on several forms.

"Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

> (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
>
> (2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.
>
> (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

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[104] Per Teehankee, *C.J.*, in *Presidential Commission on Good Government v. Peña*, No. 77663, April 12, 1988, 159 SCRA 556, 562, 566 citing Justice Isagani Cruz's separate opinion in *Baseco v. PCGG*, 150 SCRA 181, 243, which phrase was borrowed from Constitutional Commissioner Blas Ople.

> (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;
>
> (5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and
>
> (6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.[105] (underscoring supplied)

The act of respondents in employing the instrumentality of a loan transaction and exploiting the legal import thereof does not thus save the day for them, so to speak. The defense's thesis shatters in the context of ill-gotten wealth cases.

The majority holds that ill-gotten wealth must be acquired or taken through "illegal means" only. This limited restatement of the elements and modes of acquiring ill-gotten wealth goes against the expanded and developed nature and dynamics of ill-gotten wealth as legally defined above and which was quoted and applied in the *Hans Menzi* case.

Interestingly, the majority cites the same basic document of Executive Order No. 2 (March 12, 1986) which, in fact, expressly recognizes that acquisitions of ill-gotten wealth may result from either an illegal or improper use or conversion of public funds.

A discussion nonetheless, in no uncertain terms, of the series of legal provisions and rules *vis-à-vis* the acts and omissions of Cojuangco, *et al.* in concluding the presence of illegal means of acquisition is in order.

BREACH OF TRUST AND FIDUCIARY DUTY

In determining whether Cojuangco betrayed public trust, took undue advantage of authority, or violated his fiduciary duty as

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[105] PCGG RULES AND REGULATIONS, Sec. 1(A).

a director or officer, the question as to whether he held such positions in the entities involved must first be settled.

It bears noting and reiterating that Cojuangco admitted in his Answer to the Third Amended Complaint that he held, *inter alia*, the positions of President and Member of the Board of Directors of the UCPB as well as Director of the Philippine Coconut Authority (PCA):

2.01 Herein defendant admits paragraph 4 only insofar as it alleges the following:

(a) That herein defendant has held the following positions in government: Governor of Tarlac, Congressman of the then First District of Tarlac, Ambassador-at-Large, Lieutenant Colonel in the Philippine Air Force and **Director of the Philippine Coconut Authority**;

(b) That he held the following positions in private corporations: **Member of the Board of Directors of the United Coconut Oil Mills, Inc**.; **President and member of the Board of Directors of the United Coconut Planters Bank**, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc.; **Chairman of the Board and Chief Executive Officer of San Miguel Corporation**; x x x[106] (emphasis and underscoring supplied)

What he disputes, however, is whether he had served as an officer or a member of the governing bodies of the PCA and UCPB **at the time the funds used to purchase the SMC shares were obtained in 1983**. The Sandiganbayan found this matter a disputed fact.[107]

Cojuangco's asseverations and the Sandiganbayan's stance ignore the glaring admissions in his Answer.

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[106] *Rollo* (G.R. No. 180702), Vol. II, pp. 592-593.

[107] "3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PCA, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers[.]" [*rollo* (G.R. No. 166859), p. 61; (G.R. No. 180702), Vol. II, p. 833].

The Complaint made the following allegation:

12. Defendant Eduardo Cojuangco, Jr., served as a public officer during the Marcos Administration. During the period of his incumbency as a public officer, he acquired assets, funds, and other property grossly and manifestly disproportionate to his salaries, lawful income and income from legitimately acquired property.[108] (emphasis supplied),

which underscored portion was deemed admitted by him when he did *not* specifically deny it in his Answer, *viz*:

5.00. Herein defendant denies paragraph **12** of the complaint, the truth being that whatever assets he has were acquired lawfully and are not "grossly and manifestly disproportionate to his salaries, lawful income and income from legitimately acquired property."[109] (emphasis supplied)

Clearly, Cojuangco's specific denial concerns only the matter of the *acquisition* of his assets. Without specifically denying the matter of his *having served* "as a public officer during the Marcos Administration," the same is deemed admitted.[110]

Judicial notice can be taken of the political history that 1983 (when the subject SMC shares were acquired) formed part of the Marcos Administration. Cojuangco, not having specifically denied or even qualifiedly admitted his tenure as public officer during the Marcos Administration *vis-à-vis* his earlier admissions on the specific public offices or directorships he had held, the ineluctable conclusion is that he held the positions of President and Member of the Board of Directors of the UCPB and of Director of the PCA during the Marcos Administration or, at the very least, in 1983.

The argument that Cojuangco was not a subordinate or close associate of the Marcoses is the biggest joke to hit the century.

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[108] *Rollo* (G.R. No. 180702), Vol. I, p. 148.

[109] *Rollo* (G.R. No. 180702), Vol. II, p. 596.

[110] *Vide* RULES OF COURT, Rule 8, Sec. 10.

Aside from the cited offices or positions of power over coconut levy funds, Cojuangco admitted in Paragraph 3.01 of his Answer that on February 25, 1986, Cojuangco left the Philippines with former President Ferdinand Marcos.

Clearly, the intimate relationship between Cojuangco and Marcos equates or exceeds that of a family member or cabinet member, since not all of Marcos's relatives or high government ministers went with him in exile on that fateful date. If this will not prove the more than close association between Cojuangco and Marcos, I do not know what will.

A SURVEY OF THE PERTINENT LAWS RELATIVE TO THE ESTABLISHMENT OF THE **PCA** AND **UCPB** IS ALSO IN ORDER.

Republic Act No. 1145[111] provided the initial manner of appointment and tenure of members of the governing board of the Philippine Coconut Administration (Philcoa), the precursor of present-day PCA, to wit:

CHAPTER III
Governing Body

Section 5. Composition and appointment— **All corporate powers of the PHILCOA shall be vested in, and exercised by a Board of Administrators consisting of five members <u>to be appointed by the President</u> with the consent of the Commission on Appointments,** three of whom shall be coconut planters; Provided, That no person appointed to this board may serve as director or more than two government or semi-government corporations. The President shall designate from among the members of the Board its Chairman.

Section 6. Tenure and compensation— The members of the Board shall serve as designated by the President of the Philippines in their respective appointments **for a term of <u>four years</u>**, but any person to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds. The Chairman shall receive a salary

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[111] "AN ACT CREATING THE PHILIPPINE COCONUT ADMINISTRATION, PRESCRIBING ITS POWERS, FUNCTIONS AND DUTIES, AND PROVIDING FOR THE RAISING OF THE NECESSARY FUNDS FOR ITS OPERATION," enacted on June 17, 1954.

of twelve thousand pesos per annum and each member of per diem of twenty-five pesos for every meeting actually attended: Provided, That no member shall earn more than one hundred pesos a month in per diems; Provided, further, that if the member is a public official, he shall not be entitled to any per diem. (emphasis and underscoring supplied)

Almost 20 years later or on June 30, 1973, President Marcos issued P.D. No. 232 which created the Philippine Coconut Authority (PCA) by abolishing the Philcoa, the Coconut Coordinating Council, and the Philippine Coconut Research Institute, *viz.*:

Section 3. Powers and Functions. To carry out the purposes and objectives mentioned in the preceding section, the Authority, through its Board as hereinafter constituted, is hereby vested with the following powers, in addition to those transferred to it under Section 6 of this Decree:

a. To formulate and adopt a general program of development for the coconut and other palm oils industry;

x x x x x x x x x

d. **To supervise, coordinate and evaluate the activities of all agencies charged with the implementation of the various aspects of industry development, and to allocate and/or coordinate the release of public funds in accordance with approved development programs and projects**;

x x x x x x x x x

f. **To receive and administer funds provided by law**; to draw, with the approval of the President, funds from existing appropriations as may be necessary in support of its program, and to accept donations, grants, gifts and assistance of all kinds from international and local private foundations, associations or entities, and to administer the same in accordance with the instructions or directions of the donor or, in default thereof, in the manner it may in its direction determine;

g. To borrow the necessary funds from local and international financing institutions, and to issue bonds and other instruments of indebtedness, subject to existing rules and regulations of the Central Bank, for the purpose of financing programs and projects deemed vital and necessary for the early attainment of its goals and objectives;

h. **To formulate and recommend for adoption credit policies affecting production, marketing and processing of coconut and other palm oils**;

x x x x x x x x x

j. To enter into, make and execute contracts of any kind as may be necessary or incidental to the attainment of its purposes and, generally, to exercise all the powers necessary to achieve the purposes and objectives for which it is organized.

Section 4. Governing Board. **The Authority shall be governed by a Board of eleven members, who shall meet as often as necessary, composed of:**

a. Three representatives at-large of the private sector, to be appointed by the President, who shall have recognized competence in the many facets of the industry and be leaders of the industry acknowledged by both the government and private sector members of the coconut community;

b. The Chairman, National Science Development Board;
c. The Undersecretary of Agriculture and Natural Resources;
d. The Undersecretary of Trade;
e. The President, Philippine Coconut Producers Federation;
f. The Chairman, United Coconut Associations of the Philippines;
g. The Chairman of the Board, Coconut Investment Company;
h. The Director, Bureau of Plant Industry;
i. The Director, Bureau of Agricultural Extension.

A Chairman shall be designated by the President from the members of the Board. The Board shall elect a Vice-Chairman who shall assume the functions of the Chairman, whenever the latter is absent or incapacitated, and an Executive Committee of five from among its members, to which it may delegate such powers as it deems fit. (emphasis and underscoring supplied)

Then, barely five years later, Pres. Marcos issued on June 11, 1978 P.D. No. 1468,[112] which provided:

x x x x x x x x x

Section 4. Governing Board. — **The corporate powers and**

[112] Known as the "REVISED COCONUT INDUSTRY CODE."

duties of the Authority shall be vested in and exercised by Board of seven (7) members <u>**to be appointed by the President**</u>, as follows:

a) Two representatives of the Government, one of whom shall be designated by the President as Chairman and the other as Vice-Chairman;

b) Three members recommended by the Philippine Coconut Producers Federation;

c) One member recommended by the United Coconut Association of the Philippines;

d) One member recommended by the owner and operator of the hybrid coconut seednut farm herein authorized to be established.

The Board shall have the following additional powers and duties:

x x x x x x x x x

c) **To disburse the proceeds of the levies for the purposes herein authorized**;

x x x x x x x x x (emphasis and underscoring supplied)

From these amendments to the PCA charter, two things remain crystal clear — *first*, that the members of PCA Board were to be appointed by the President either for a given term or, at the very least, at his pleasure as the appointing authority; and *second*, that the members of the PCA Board had been given vast authority in managing and disbursing the coconut levy funds, <u>which includes the corporations formed and organized therefrom and all assets acquired therefrom, such as the CIIF Ill Mills</u>.

Since appointment as member of the PCA Board is made by the President, judicial notice of Cojuangco's appointment by then President Marcos as PCA Director must be also taken, it being an official act of the executive department of the Philippines.[113] A sampling of available public records in the

[113] <u>*Vide*</u> RULES OF COURT, Rule 129, Sec. 1.

form of PCA annual reports[114] confirms that Cojuangco was a member of the governing board of the PCA in the early 1980s.

With respect to the UCPB, Cojuangco's description of it as a "*private* corporation" does not bind the Court and cannot lend support to the proposition that the period during which he was the UCPB President and Director is not within the scope of his subsequent admission as a "*public* officer during the Marcos Administration."

UCPB was a public corporation during the period material to the complaint.

Paragraph 13, Section 2 of the Administrative Code of 1987[115] provides:

> (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations. (underscoring supplied)

Even under the 1973 Constitution, this framework was established with the issuance of Presidential Decree No. 2029[116] which recognized the ruling that "under the [1973] Constitution, government-owned or controlled corporations include those created

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[114] 1981 PCA Annual Report, 1982 PCA Annual Report, 1984 Annual Report, reproduced from copies in the collection of the National Library. The 1983 PCA Annual Report was reportedly unavailable.

[115] EXECUTIVE ORDER No. 292 (July 25, 1987).

[116] PRESIDENTIAL DECREE No. 2029 entitled "Defining Government-Owned or Controlled Corporations and Identifying their Role in National Development" (February 4, 1986).

by special law as well as those through the Corporation Code[.]"[117] Section 2 of P.D. No. 2029 reads:

> Section 2. *Definition*. A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock;
>
> Provided, that a corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government financial institution, whether by a foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a government-owned or controlled corporation before such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation;
>
> Provided, further, that a corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a government-owned or controlled corporation, until it is transferred to private ownership; and
>
> Provided, finally, that a corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not on the basis of the special law alone be considered a government-owned or controlled corporation. (underscoring supplied)

Under such conceptual framework, UCPB suited the classification of a government-owned and controlled corporation.

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[117] *Id.*, 2nd whereas clause.

UCPB, then known as the First United Bank, was acquired by the government in 1975 by virtue of P.D. No. 755 and the "Agreement for the Acquisition of a Commercial Bank for the benefit of the Coconut Farmers" dated May 25, 1975 entered into by the PCA and Cojuangco using coco levy funds to serve as the repository of the coco levy funds and to administer said public funds. Under said Agreement, the PCA bought 72.2% of the UCPB from Cojuangco who retained for himself 7.2% as "payment for management services." On this score alone, Cojuangco indeed exercised management authority from 1975 to 1980 and from 1981 to 1985.

Given the extent of government ownership of its shares of stock, the public nature of the funds in its control, the purpose for which it was acquired, and the manner of its acquisition, UCPB was thus a government-owned and controlled corporation (GOCC). Cojuangco, as then President and Member of the Board of Directors of UCPB, was thus, indeed, a public officer during the Marcos Administration.

In light of the admissions as discussed, it was no longer incumbent upon the Republic to prove that Cojuangco was an officer and member of the governing boards of these bodies at that time. Cojuangco could, of course, it bears reiteration, have adduced evidence to contradict, on grounds allowed by the rules, his admissions in order to otherwise show that he was not connected to these entities during the Marcos regime. But he did not.

It having been established that Cojuangco was a Director of PCA, a government entity, and a President and Director of UCPB, a GOCC, his act of acquiring loans and credit advances from UCPB and the CIIF Oil Mills in order to purchase the subject SMC shares through the various Cojuangco companies was **in violation of his fiduciary duty as director.**

"Fiduciary duty" has been defined as "a duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied

by law.[118] "Fiduciary" connotes a very broad term embracing both technical relations and those informal relations which exist wherever one person trusts in or relies upon another; one founded on trust or confidence reposed by one person in the integrity and fidelity of another. Such relationship arises whenever confidence is reposed on one side, and domination and influence result on the other; the relation can be legal, social, domestic, or merely personal.[119] It is a relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other.[120]

The Court had, in *Gokongwei, Jr. v. Securities and Exchange Commission,*[121] the occasion to explain at length <u>such fiduciary duty of a director of a corporation</u>:

> Although in the strict and technical sense, <u>directors</u> of a private corporation are not regarded as trustees, **there cannot be any doubt that their character is that of a fiduciary insofar as the corporation and the stockholders as a body are concerned**. **As agents entrusted with the management of the corporation for the collective benefit of the stockholders, "they <u>occupy a fiduciary relation, and in this sense the relation is one of trust</u>**."

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[118] *BLACK'S LAW DICTIONARY* (6th Edition), p. 625.

[119] <u>*Vide*</u> *Matter of Heilman's Estate*, 37 Ill.App.3d 390, 345 N.E.2d 536, 540.

[120] *BLACK'S LAW DICTIONARY*, *supra* note 118.

[121] G.R. No. L-45911, April 11, 1979, 89 SCRA 336.

"The ordinary trust relationship of directors of a corporation and stockholders," according to *Ashaman v. Miller,* "is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders. Equity recognizes that stockholders are the proprietors of the corporate interests and are ultimately the only beneficiaries thereof * * *.

Justice Douglas, in *Pepper v. Litton,* emphatically restated the standard of fiduciary obligation of the directors of corporations, thus:

A director is a fiduciary. ... Their powers are powers in trust. ... He who is in such fiduciary position cannot serve himself first and his cestuis second. ... He cannot manipulate the affairs of his corporation to their detriment and in disregard of the standards of common decency. He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters ... He cannot utilize his inside information and strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do so directly. **He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference or advantage of the fiduciary to the exclusion or detriment of the cestuis.**

And in *Cross v. West Virginia Cent, & P. R. R. Co.,* it was said:

. . . A person cannot serve two hostile and adverse masters, without detriment to one of them. A judge cannot be impartial if personally interested in the cause. No more can a director. Human nature is too weak for this. Take whatever statute provision you please giving power to stockholders to choose directors, and in none will you find any express prohibition against a discretion to select directors having the company's interest at heart, and it would simply be going far to deny by mere implication the existence of such a salutary power.[122] (emphasis and underscoring supplied)

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

Since at the time Cojuangco and the Cojuangco companies obtained loans from UCPB/CIIF Oil Mills to purchase SMC shares, Cojuangco was concurrently President and/or Director of the UCPB and PCA, he is considered to have had a fiduciary duty towards these entities, especially with respect to UCPB which, at that time, was a GOCC, and the PCA, the government entity tasked to oversee the entire coconut industry including the coco levy fund.

Furthermore, in view of the public nature of the funds involved, Cojuangco became a fiduciary not only of the **entities** involved but also of the **public funds**. As stated in *Gokongwei*, a director cannot serve himself first and his *cestuis* (the corporations and the public) second or use his power as such director or officer for his personal advantage or preference. Since the avowed purpose for which UCPB was acquired by the government was to administer the coco levy funds to provide them with "readily available credit facilities at preferential rates," Cojuangco, **in buying the SMC shares** through the loans he obtained from UCPB and CIIF Oil Mills **for his own benefit**, **violated his fiduciary obligations by *self-dealing*,** an act proscribed under the Corporation Code, Sections 31 and 34 of which read:

Sec. 31. ***Liability of directors, trustees or officers.*— Directors or trustees** who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation **or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.**

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

x x x x x x x x x

Sec. 34. ***Disloyalty of a director.*** **— Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same,** unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture. (emphasis supplied)

Indeed, given that SMC may be considered a profitable business and, therefore, no prejudice in terms of loss might have been suffered by UCPB, CIIF Oil Mills or the coconut farmers for whom Cojuangco was deemed to hold the funds in trust, still his acquisition of the SMC shares amounted to his **depriving the coconut farmers** of a business opportunity which rightfully belonged to them, *i.e.*, access to the coco levy funds, and his gaining profits therefrom to the **detriment of the intended beneficiaries**. By no stretch of one's imagination can it be assumed that the purchase of SMC shares directly or even indirectly redounded to the benefit of the coconut farmers. Under Section 9 of P.D. No. 961, what UCPB was, at most, authorized to invest in were shares of stocks in corporations engaged in businesses *related to the coconut and palm oil industry* of which SMC, then primarily engaged in the food and beverage industries, may not be considered covered. The provision adverted to reads:

Section 9. *Investments For the Benefit of the Coconut Farmers.* Notwithstanding any law to the contrary, the bank acquired for the benefit of the coconut farmers under P.D. 755 is hereby given full power and authority **to make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and the operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oils industry in all its aspects and the establishment of a research into the commercial and industrial uses of coconut and other palm oil industry**. For that purpose, the Authority shall, from time to time, ascertain how much of the collections of the Coconut Consumers Stabilization Fund and/or the Coconut Industry Development Fund is not required

to finance the replanting program and other purposes herein authorized and such ascertained surplus shall be utilized by the bank for the investments herein authorized. (emphasis and underscoring supplied)

But even assuming *arguendo* that UCPB's investing in SMC shares would have been allowed under the above provision, still, such investments could only have been made for and in behalf of the coconut farmers, and NOT for and in behalf of a single individual or Cojuangco alone.

As President and Director of UCPB, Cojuangco was also violating Section 83 of Republic Act No. 337 of the General Banking Law, as amended by P.D. No. 1795, the law in force at that time which prohibited directors and/or officers of a banking institution from either directly or indirectly borrowing any of the deposits of funds of such banks *except* with the written approval of all directors of the bank. Said section states:

Sec. 83. **No director or officer of any banking institution shall, either directly or indirectly, for himself or as the representative or agent of other, borrow any of the deposits of funds of such banks, nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for money borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned**. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.

The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers, or stockholders. **However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two percent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits** and book value of the paid-in capital

contribution in the bank: Provided, however, That loans and advances to officers in the form of fringe benefits granted in accordance with rules and regulations as may be prescribed by the Monetary Board shall not be subject to the preceding limitation.[123] (emphasis supplied)

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[123] Said section has been incorporated into the present General Banking Law of 2000 as Sec. 36, *viz.*:

> **Sec. 36. *Restriction on Bank Exposure to Directors, Officers, Stockholders and Their Related Interests*.**— No director or officer of any bank shall, directly or indirectly, for himself or as the representative or agent of others, borrow from such bank nor shall he become a guarantor, endorser or surety for loans from such bank to others, or in any manner be an obligor or incur any contractual liability to the bank except with the written approval of the majority of all the directors of the bank, excluding the director concerned: *Provided*, That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a fringe benefit plan approved by the Bangko Sentral. The required approval shall be entered upon the records of the bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising and examining department of the Bangko Sentral.
>
> Dealings of a bank with any of its directors, officers or stockholders and their related interests shall be upon terms not less favorable to the bank than those offered to others.
>
> After due notice to the board of directors of the bank, the office of any bank director or officer who violates the provisions of this Section may be declared vacant and the director or officer shall be subject to the penal provisions of the New Central Bank Act.
>
> The Monetary Board may regulate the amount of loans, credit accommodations and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests, as well as investments of such bank in enterprises owned or controlled by said directors, officers, stockholders and their related interests. However, the outstanding loans, credit accommodations and guarantees which a bank may extend to each of its stockholders, directors, or officers and their related interests, shall be limited to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contribution in the bank: *Provided*, *however,* That loans, credit accommodations and guarantees secured by assets considered as non-risk by the Monetary Board shall be excluded from such limit: *Provided, further*, That loans, credit accommodations and advances to officers in the form of fringe benefits granted in accordance with rules as may be prescribed by the Monetary Board shall not be subject to the individual limit.

Cojuangco and the Cojuangco companies having admitted in their joint Pre-Trial Brief that the SMC shares were actually purchased with proceeds from loans and credit advances from UCPB and the CIIF Oil Mills, and having foregone the opportunity during trial to show that a written authority from the UCPB's Board of Directors was secured before contracting said loans, ineluctably, **Cojuangco violated the old banking law.** That President Marcos issued Letter of Instructions (LOI) No. 926 (September 3, 1979) that paved the way for the acquisition of UCPB as the bank that would administer the lending of coco levy funds and which, in effect, exempted borrowings from the UCPB from the usual loan restrictions, is of no moment. Section 4 of LOI No. 926 provides:

> Sec. 4. Financial Borrowings — **All financial borrowings of the private corporation authorized to be organized as well as any Participating Mill** **to finance their respective capital expenditures** **including purchase of spare parts and inventories shall be expeditiously and promptly approved, and such borrowings are hereby declared exempt from restrictions/ limitations**: on simple borrower's limitations; and on loans to corporations with interlocking directors, officers, stockholders, related interests and subsidiaries and affiliates, **it being understood that such lendings are in effect made to the coconut industry as a whole and not to any particular individual or entity**. (emphasis and underscoring supplied)

Clearly, the exemption granted in LOI No. 926 only extended to *corporate* borrowings, not to individual borrowings.

UNDISPUTED FACTS[124] culled by the Sandiganbayan, to which Cojuangco and Cojuangco companies did not object, yield to the following conclusions: (i) It was Cojuangco *alone* who **obtained** the loans; (ii) it was Cojuangco *alone* who **purchased**

The Monetary Board shall define the term *"related interests."*

The limit on loans, credit accommodations and guarantees prescribed herein shall not apply to loans, credit accommodations and guarantees extended by a cooperative bank to its cooperative shareholders.

[124] *Supra.*

or **acquired** the subject SMC shares; and (iii) the subject SMC shares were **registered**, however, not only in the name of Cojuangco but also in the name of the Cojuangco companies.

In his Answer, Cojuangco admits that he is the *owner* of the SMC shares registered in the names of Primavera Farms, Inc., Silver Leaf Plantations, Inc., and Meadowlark Plantations, Inc., wherein 99.6% of the corporations' shares were held in trust by Atty. Jose C. Concepcion under three separate "Declarations of Trust and Assignment of Subscription." Likewise admitted therein is the fact that Atty. Concepcion and other registered stockholders of the three Cojuangco companies executed Voting Trust Agreements in favor of Cojuangco representing almost half[125] of the total subject SMC shares. Another admitted fact is that the other Cojuangco companies were incorporated *in Cojuangco's behalf* by the ACCRA Law Office.[126]

That the other purportedly registered stockholders of the Cojuangco companies, like Atty. Concepcion, did not stake a claim over the SMC shares bears noting. That they were not alerted thereby enfeebles any claim of ownership.[127]

These circumstances bolster the Sandiganbayan's judicial notice of case law [Undisputed Facts, Item No. 5] on the presence of indications that the Cojuangco companies are "dummies" or manipulated instruments or repositories of wealth.[128] And whatever machinations of incorporation and instrumentalities of declarations were employed, the inescapable conclusion remains that the subject SMC shares were funneled into the Cojuangco companies. Hence, per case law and as confirmed by the admissions and the records of the proceedings, the Cojuangco companies are 'dummies' or manipulated instruments.

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[125] 10,763,185 out of the 27,198,545 SMC shares at the time of sequestration.

[126] Vide Answer, *rollo*, (G.R. No. 180702), pp. 177-179.

[127] Vide *Republic v. Estate of Hans Menzi*, *supra* note 84 at 58-59.

[128] *Supra* note 7, citing *Republic v. Sandiganbayan*, 240 SCRA 376 (1995).

Since Cojuangco admitted having acquired the loans for himself, albeit through various dummy corporations, and absent written authority from UCPB's then Board of Directors, it becomes evident that **he violated the restrictions on bank exposure under the old banking law**. The issuance of the LOI by then President Marcos, rather than exempting from the restrictions imposed on loans being acquired by officers and directors of banks, only underscored the obvious: that Cojuangco was a close ally of Marcos and gained undue advantage due to such close relationship; and that UCPB was primarily acquired to siphon off the coco levy funds.

Significantly, as the above-quoted Section 4 of LOI No. 926 itself provides, the borrowings or loans were intended "in effect" for the benefit of the coconut industry and the coconut farmers as a whole and NOT for the benefit of any particular individual or entity.

IN SUM, in acquiring the loans for himself while he was an officer of UCPB, Cojuangco **VIOLATED** not only **HIS FIDUCIARY OBLIGATION** under the Corporation Code and the **PROHIBITION ON SELF-DEALING** under the banking law, but also the **PROVISION IN THE LOI ON HOW THE LOANS ARE TO BE ADMINISTERED**. The avowed legal intention or policy behind the LOI in fact goes against factual reality, as even the financial borrowings were supposedly intended "to finance their [Participating Mills'] capital expenditures."

It having been established that Cojuangco engaged in prohibited conflict-of-interest transactions by buying the SMC shares using coco levy funds being administered by the UCPB and CIIF Oil Mills for his own benefit, it follows that a **constructive trust** was formed in favor of the coconut farmers who should have benefited from such funds.

The Civil Code provides:

> Art. 1455. When any trustee, guardian, or other person **holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor**

of the person to whom the funds belong. (emphasis and underscoring supplied)

A constructive trust is "a right of property, real or personal, held by one party for the benefit of another; that there is a fiduciary relation between a trustee and a *cestui que trust* as regards certain property, real, personal, money or choses in action."[129] That under Article 1455 there must be a breach of fiduciary relation and profit or gain resulting therefrom in order for a constructive trust to be created in favor of that legally entitled to it, *Huang v. Court of Appeals*[130] underscores*:*

A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. The duty to convey the property arises because it was acquired through **fraud, duress, or abuse of confidence, undue influence** or mistake or **breach of fiduciary duty** or through the wrongful disposition of another's property.[131] (emphasis supplied)

Fraud in this kind of trust in fact need not even be present. The landmark case of *Severino v. Severino*[132] enlightens:

A receiver, trustee, attorney, agent, or any other person occupying fiduciary relations respecting property or persons, is utterly disabled from acquiring for his own benefit the property committed to his custody for management. **This rule is entirely independent of the fact whether any fraud has intervened. No fraud in fact need be shown, and no excuse will be heard from the trustee.** It is to avoid the necessity of any such inquiry that the rule takes so general a form. **The rule stands on the moral obligation to refrain from placing one's self in positions which ordinarily excite conflicts between self-interest and integrity. It seeks to remove the temptation that might arise out of such a relation to serve one's self-interest at the expense of one's integrity and duty to another,**

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[129] *Salao v. Salao*, G.R. No. L-26699, March 16, 1976, 70 SCRA 65.

[130] G.R. No. 108525, September 13, 1994, 236 SCRA 420.

[131] *Id.* at 428.

[132] 4 Phil. 343 (1923), citing *Gilbert vs. Hemston*, 79 Mich. 326.

by making it impossible to profit by yielding to temptation. It applies universally to all who come within its principle. (emphasis and underscoring supplied)

In the present case, whether Cojuangco committed fraud is no longer material, what is material and must be established being the existence of the fiduciary relation and the use of such position and the attendant abuse of the confidence reposed in him by virtue of that position which results in the constructive trust.

Even assuming *arguendo* that fraud is material, the rule on the burden of proof of fraud, as the majority insists, does not apply in the present case. Authorities on evidence cite the existence of a fiduciary relation as an exception:

The law, in the absence of the existence of any fiduciary relation, never presumes fraud, dishonesty, or bad faith; on the contrary, the presumption is in favor of good faith and honesty until the contrary appears x x x However, **when a fiduciary relation exists between the parties to a transaction, the burden of proof of its fairness is upon the fiduciary. He must show that there was no abuse of confidence, that he has acted in good faith, and the act by which he is benefited was the free, voluntary, and independent act of the other party, done with full knowledge of its purpose and effect**. Examples of such relationships may be seen in the case of husband and wife, attorney and client, **directors of a corporation and the corporation**, or any other relationship of an intimate and fiduciary character. A fiduciary seeking to profit by a transaction with the one who confided in him has the burden of showing that he communicated to the other not only the fact of his interest in the transaction, but all information he had which it was important for the other to know in order to enable him to judge the value of the property. The formal creation of a fiduciary relationship is not essential to the application of this rule. The principles apply to all cases in which confidence is reposed by one party in another, and the trust or confidence is accepted under circumstances which show that it was founded on intimate, personal, and business relations existing between the parties, which give the one advantage or superiority over the other, and impose the burden of proving that

the transaction was fair and just on the person acquiring the benefit.[133] (emphasis and underscoring supplied)

Since Cojuangco was a fiduciary, the burden of evidence on the fairness of the questionable transactions was shifted to him. He failed to discharge this burden.

In other words, contrary to the view of the majority, it was not incumbent upon the Republic to adduce evidence on the particular details of the loans and credit advances for it was Cojuangco's burden to establish the regularity of these transactions. I am not "second-guessing," as the majority points out, for I am justified to deem the irregularity or illegality thereof as established after Cojuangco refused to discharge his burden. The intentional concealment of facts as to render secretive the assailed loan transactions entered into by a fiduciary must be, as enunciated by the above-cited rule, taken against Cojuangco, he being the fiduciary.

VIOLATION OF PENAL LAWS

Aside from the violating the above-enumerated laws in purchasing the SMC shares, Cojuangco also violated penal laws in his capacity as a **public officer.**[134]

First, Section 3(i) of Republic Act No. 3019 prohibits a public officer from becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval

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[133] Francisco, *THE REVISED RULES OF COURT IN THE PHILIPPINES* (1997 Edition), Vol. VII, Part II, pp. 15-16, citing 20 Am. Jur. 147.

[134] Under REPUBLIC ACT No. 3019, a "public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government.

Pursuant to the Title 7, Book II of the REVISED PENAL CODE, a "public officer" is "any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer."

of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Second, Article 216[135] of the Revised Penal Code prohibits public officers from directly or indirectly, becoming interested in any contract or business in which it is his official duty to intervene.

Cojuangco's participation in the performance of public functions in a branch of the government was through his appointment by then President Marcos to the identified positions. Clearly, whether by the definition under R.A. 3019 or the Revised Penal Code, Cojuangco is deemed to be a public officer.

Cojuangco, in buying the SMC shares out of loan proceeds he obtained from UCPB and CIIF Oil Mills, of which he was an officer, violated the cited provision of the Graft and Corrupt Practices Act, akin to the act of self-dealing that is prohibited under Sections 31 and 34 of the Corporation Code. Further, under the last paragraph of Section 3(i), there is the presumption of interest for personal gain.[136] Consequently, Cojuangco ought to have proven that he did not gain personally from the loan transactions which involved UCPB, a GOCC, and the PCA, a government body.

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[135] ART. 216. *Possession of prohibited interest by a public officer.* — The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

This provision is applicable to experts, arbitrators and private accountants who, in like manner, shall take part in any contract or transaction connected with the estate or property in the appraisal, distribution or adjudication of which they shall have acted, and to the guardians and executors with respect to the property belonging to their wards or estate. (underscoring supplied)

[136] Interest for personal gain shall be presumed against these public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

With respect to Article 216 of the Revised Penal Code, Cojuangco had a hand in how the funds were to be utilized and in choosing the recipients of the loans and credit advances. For him to purchase SMC shares with proceeds from loans sourced from the coconut levy funds was a clear violation of Article 216. What is proscribed is the mere possession of the prohibited interest. It does not matter whether he actually approved the transaction or actually intervened in the contract or business. Moreover, proof that actual fraud was committed against the government is not required, for the act is punished because of the possibility that fraud may be committed or that the officer may place his personal interest above that of the government.[137]

The foregoing determinations notwithstanding, the majority posits that the Republic still needed to adduce competent evidence to substantiate the elemental allegations of the complaint. It declares that Cojuangco, *et al.* "did not admit that the acquisition of the Cojuangco block of SMC shares had been illegal, or made with public funds." The phraseology, however, is inaccurate in two respects. *First*, the statement is tagged with an erroneous predicate, for the premise draws one to interject that Cojuangco, *et al.* could not admit a conclusion of law. *Second*, the statement fails to squarely consider all relevant facts that need not be proven by evidence which the Court determined in arriving at its legal conclusion.

The **categories of facts that need not be proven by evidence** were enumerated by this Court in one case that expounded on Section 1 of Rule 131 of the Rules of Court, as follows:

> *Burden of proof.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his **claim or defense** by the amount of evidence required by law.
>
> Obviously, the burden of proof is, in the first instance, with the plaintiff who initiated the action. **But in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, not by who is the plaintiff or the defendant**.

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[137] Vide *U.S. v. Udarbe*, 28 Phil. 383 (1913).

The test for determining where the burden of proof lies is to ask which party to an action or suit will fail if he offers no evidence competent to show the facts averred as the basis for the relief he seeks to obtain, and based on the result of an inquiry, which party would be successful if he offers no evidence.

In ordinary civil cases, **the plaintiff has the burden of proving the material allegations of the complaint which are denied by the defendant,** and **the defendant has the burden of proving the material allegations in his case where he sets up a new matter**. All facts in issue and relevant facts must, as a general rule, be proven by evidence except the following:

(1) Allegations contained in the complaint or answer immaterial to the issues.

(2) Facts which are admitted or which are not denied in the answer, provided they have been sufficiently alleged.

(3) Those which are the subject of an agreed statement of facts between the parties; as well as those admitted by the party in the course of the proceedings in the same case.

(4) Facts which are the subject of judicial notice.

(5) Facts which are legally presumed.

(6) Facts peculiarly within the knowledge of the opposite party.

The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created thereby which if no proof to the contrary is offered will prevail; it does not shift the burden of proof.[138] (italics in the original; underscoring supplied)

BY WAY OF SUMMATION, the following **relevant facts/ circumstances that need not be proven by evidence**, as gathered from the foregoing discussion which is anchored on the immediately-cited listing of legal bases for considering these facts as established, REBUT THE ARGUMENT THAT THERE IS NO EVIDENCE AT ALL TO SUPPORT THE REPUBLIC'S CAUSE OF ACTION.

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[138] *Republic v. Vda. De Neri*, *supra* note 82 at 692-693.

1. The identity of the subject SMC shares, referring to a total of 27,198,545 shares of stocks (at the time of sequestration in 1989) representing approximately 20% of the outstanding shares.

2. The sale of the subject SMC shares was entered into in 1983.

3. The sellers were Ayala Corporation and other corporations and individuals.

4. The lone buyer was Eduardo Cojuangco, Jr.

5. In purchasing the SMC shares, Cojuangco used proceeds of loans

6. It was Cojuangco alone who obtained the loans.

7. The proceeds of loans refer to borrowings from CIIF Oil Mills and UCPB.

8. No private funds were shown to have been used to purchase the SMC shares.

9. The coconut levy funds are not only clearly affected with public interest but also, in fact, *prima facie* public funds. The same holds true with corporations formed and organized from coconut levy funds and all assets acquired therefrom, they being fruits of funds with public roots.

10. Absent any contrary evidence, the subject SMC shares remained public in character.

11. Circumstances indicate that the Cojuangco companies are 'dummies' or manipulated instruments.

12. The SMC shares have been registered not only in Cojuangco's name but also in the name of defendant Cojuangco Companies.

13. Cojuangco is the owner of the SMC shares registered in the names of Primavera Farms, Inc., Silver Leaf Plantations, Inc., and Meadowlark Plantations, Inc., wherein 99.6% of the corporations' shares were held in trust by Atty. Jose C. Concepcion under three separate "Declarations of Trust and Assignment of Subscription."

14. Atty. Jose Concepcion of ACCRA Law Office and other registered stockholders of the three Cojuangco companies executed Voting Trust Agreements in favor of Cojuangco, representing almost half[139] of the total subject SMC shares.

[139] 10,763,185 out of the 27,198,545 SMC shares at the time of sequestration.

15. The other Cojuangco companies, aside from the three earlier named, were incorporated in Cojuangco's behalf by the ACCRA Law Office.[140]

16. The other purportedly registered stockholders of the Cojuangco companies did not stake a claim over the SMC shares.

17. On February 25, 1986, Cojuangco left the Philippines in the company of former President Ferdinand Marcos.

18. The PCGG Rules and Regulations define "ill-gotten wealth" as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the [various enumerated] means[141] or similar schemes.

19. The year 1983 forms part of the period of the Marcos administration.

20. Cojuangco was President and Member of the Board of Directors of the UCPB, and Director of the Philippine Coconut Authority (PCA), *inter alia*, during the Marcos administration.

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[140] *Vide* Answer, *rollo*, (G.R. No. 180702), pp. 177-178.

[141] (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

21. UCPB was a public corporation in 1983.[142]

22. The PCA Board of Directors had been expressly given vast authority in managing and disbursing the coconut levy funds including the corporations formed and organized therefrom and all assets acquired therefrom, such as all CIIF Oil Mills.

23. Case law provides that a director occupies a fiduciary relation as he cannot serve himself first and his *cestuis* second. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors.[143]

24. Sections 31 and 34 of the Corporation Code prohibit acts of "self-dealing."

25. Section 9 of Presidential Decree No. 961 limits the authority to make UCPB investments only in the establishment and operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oils industry in all its aspects and the establishment of research into the commercial and industrial uses of coconut and other palm oil industry.

26. Section 83 of the then General Banking Law provides the general rule that prohibits directors and officers of a banking institution from directly or indirectly borrowing any of the deposits of funds of such banks.

27. The exemption granted under Letter of Instructions No. 926 states that loans sourced from the coconut levy funds are extended only to corporate borrowings, not to individual borrowings.

28. The rule on constructive trust under Article 1455 of the Civil Code prohibits a trustee from acquiring for his own benefit the property under his management. Case law provides that fraud need not be shown.[144]

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[142] Given the extent of government ownership of its shares of stock, the public nature of the funds in its control, the purpose for which it was acquired, and the manner of its acquisition, UCPB was thus a government-owned and controlled corporation (GOCC). Meanwhile, PCA was a government entity. Considering the foregoing and in light of the earlier admissions, Cojuangco was indeed a public officer in 1983, it having been established that Cojuangco was a PCA Director and a UCPB President and Director.

[143] Citing *Gokongwei, Jr. v. Securities and Exchange Commission*, No. L-45911, April 11, 1979, 89 SCRA 336, *inter alia.*

[144] Citing *Severino v. Severino*, *supra* note 132, *inter alia*.

29. No evidence was shown to discharge the burden of Cojuangco, as a fiduciary, to demonstrate that the loan transactions were regularly entered into.

30. Section 3(i) of Republic Act No. 3019 prohibits a public officer from becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

31. Article 216[145] of the Revised Penal Code prohibits public officers from directly or indirectly, becoming interested in any contract or business in which it is his official duty to intervene.

IN SUM, since at the time of the purchase of the subject SMC shares, Cojuangco, a trusted close associate of Former President Marcos, was a director and corporate officer of the PCA and UCPB, hence, he was considered a fiduciary of the coconut levy funds, its derivatives and assets, which are public in character being administered by said entities. His use for his *personal* benefit of the very same funds entrusted to him, which was released to him through illegal and improper machination of loan transactions, and his contravention of the then existing corporation laws and laws restricting a bank's exposure to its director or officers indicate a clear violation of such fiduciary duty. These shares which respondents acquired using the proceeds from such loans do not thus pertain to them but to the UCPB and the CIIF Oil Mills pursuant to a constructive trust, and following Section 31 of the Corporation Code, said shares should be reconveyed to the Republic in trust for the coconut farmers.

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[145] ART. 216. *Possession of prohibited interest by a public officer.* — The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

This provision is applicable to experts, arbitrators and private accountants who, in like manner, shall take part in any contract or transaction connected with the estate or property in the appraisal, distribution or adjudication of which they shall have acted, and to the guardians and executors with respect to the property belonging to their wards or estate.

WHEREFORE, in light of all the foregoing, I **DISSENT** from the majority opinion as I **PROFFER** the following dispositions:

The Sandiganbayan's assailed Resolutions of October 8, 2003 and June 24, 2005 in G.R. No. 169203 are AFFIRMED WITH MODIFICATION in that all the restrictions imposed in the dispositive portion thereof are DELETED; the Resolution of December 10, 2004 in G.R. No. 166859 is AFFIRMED; and the Decision of November 28, 2007 in G.R. No. 180702 is REVERSED and SET ASIDE.

The Cojuangco, *et al.* Block of San Miguel Corporation shares of stock totalling 27,198,545 as of the date of sequestration thereof, together with all dividends declared, paid and issued thereon, as well as any increments thereto and rights arising therefrom, are DECLARED owned by the Government in trust for all the coconut farmers and ORDERED RECONVEYED to the Government. For the purpose of determining the total current valuation of these shares, the dividends accruing therefrom and increments thereto,[146] the case is REMANDED to the Sandiganbayan which is ordered to carry out the same with dispatch.

DISSENTING OPINION

BRION, *J.*:

This Opinion refers to three consolidated petitions — G.R. No. 166859, G.R. No. 169203, and G.R. No. 180702 — involving related issues raised in the Sandiganbayan Civil Case No. 0033-F. I dissent in light of the gross negligence the counsel for the Republic committed in the course of the handling of the case — a circumstance that denied the Republic its day in court in a claim for recovery that involves an approximate present-day value of ₱84.56 billion or 5.49% of the 2010 entire national budget. Thus, I vote to grant the petition for purposes of the remand of the case for hearing on the merits through competent counsels whose integrity are beyond question.

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[146] In conformity with *Cojuangco v. Sandiganbayan*, G.R. No. 183278, April 24, 2009, 586 SCRA 790.

I. BACKGROUND FACTS

On July 31, 1987, the petitioner Republic of the Philippines (*Republic*) filed a complaint with the Sandiganbayan, entitled *Republic v. Eduardo M. Cojuangco, et al.* and docketed as **Civil Case No. 0033**. The complaint, which named 59 other defendants, was for the recovery of assets and other properties that were allegedly ill-gotten.[1]

The complaint underwent amendments and the final version — the *Third Amended Complaint (Subdivided) [Re: Acquisition of San Miguel Corporation (SMC)]* — was filed on May 19, 1995.[2] On March 24, 1999, the Sandiganbayan allowed Civil Case No. 0033 to be subdivided into eight complaints, each relating to different transactions and assets. **Civil Case No. 0033-F** impleaded as defendants the private respondents Eduardo M. Cojuangco, Jr. (*Cojuangco*), 11 other individuals, and 71 corporations. The properties sought to be recovered were two blocks of SMC shares, generally described as follows:

(1) 33,133,266 SMC shares, labeled for convenience as the ***"Coconut Industry Investment Fund (CIIF) block"*** or ***"CIIF block"*** and registered in the names of 14 holding companies[3]; and

(2) 16,276,545 SMC shares, known for convenience as the ***"Cojuangco block"*** and registered in the names of the 44 respondent corporations.[4]

The CIIF block was subsequently awarded to the Republic by the Sandiganbayan in its Partial Summary Judgment promulgated on May 7, 2004.[5] This judgment lapsed to finality and was duly executed. Litigation on the Cojuangco block

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[1] *Rollo* (G.R. No. 180702), Volume I, p. 80.

[2] *Id.*, Volume II, pp. 516-538.

[3] *Id.* at 527-528.

[4] *Id.* at 528-531.

[5] Sandiganbayan Records, Volume 12, pp. 469-533.

continued. This is the aspect of Civil Case No. 0033-F that is now before the Court through the present consolidated petitions.

A. The Complaint

In its complaint,[6] the Republic claimed that Cojuangco served as a public officer during the Marcos administration. In the course of this service, he acquired assets, funds, and other properties manifestly disproportionate to his lawful income. He allegedly had control over the coconut levy funds, which he misused to buy out the majority of the outstanding shares of SMC. In 1983, he bought most of the 20 million shares of Enrique Zobel in SMC. Allegedly, the Cojuangco block numbered **16,276,897 shares** and were worth $49,000,000. Some of these shares were placed in the names of Meadowlark Plantations, Inc. and Primavera Farms, Inc., which are also defendants in Civil Case No. 0033-F. The Articles of Incorporation of Meadowlark Plantations, Inc., Primavera Farms, Inc., and Silver Leaf Plantations, Inc. show that Atty. Jose C. Concepcion owned 99.6% of their outstanding stocks. His shares in these companies, however, were covered by three documents entitled ***Declaration of Trust and Assignment of Subscription,*** which he had executed in favor of an unnamed assignee. Additionally, Atty. Concepcion and four other stockholders of the three corporations executed ***Voting Trust Agreements*** in favor of Cojuangco. (Thus, the shares – while really belonging to an unknown assignee – were controlled and could be voted by Cojuangco.) The other defendant corporations (also respondents in the present petitions) are purportedly owned by interlocking directors who have admitted their status as mere "nominee" stockholders. The Republic claimed that the respondents used the funds advanced by six large coconut oil mills and 10 *copra* trading companies and borrowed as well from the United Coconut Planters Bank (*UCPB*) to purchase the holding companies and the SMC shares.[7]

The Republic alleged, too, that Cojuangco acquired the SMC shares in breach of public trust and by abuse of right and power,

[6] *Rollo* (G.R. No. 108702), Volume I, pp.139-167.

[7] *Rollo* (G.R. No. 180702), Volume II, pp. 528-531.

resulting in his unjust enrichment. Thus, it sought to recover the funds and properties, including their increments (such as cash and stock dividends and interests), as these are properties held under constructive trust for the Republic. It likewise prayed for the award of damages — actual, moral, temperate, nominal, and exemplary — and attorney's fees, litigation expenses, and treble judicial costs.[8]

B. The Answer

In his *Answer*,[9] Cojuangco denied that he engaged in any unlawful transaction and used coconut levy funds in acquiring the subject property. However, **he admitted:**

> **(1) that he was a Director of the Philippine Coconut Authority** (*PCA*), and a **Director and President of the UCPB; and**
>
> (2) that in 1983, he acquired from the Ayala Corporation approximately 20% of SMC's outstanding capital stock; these shares were registered in the name of Meadowlark Plantations, Inc., Silver Leaf Plantations, Inc., and Primavera Farms, Inc. He clarified that **he was the beneficial owner** of these shares.

Cojuangco filed counterclaims for actual and moral damages for the illegal sequestration of his shares. The respondent corporations also filed counterclaims for actual and moral damages on account of besmirched reputation, the illegal sequestering of their property, and the filing of an unfounded suit.[10]

C. The Pre-Trial

In his *Pre-Trial Brief* dated February 11, 2000,[11] Cojuangco identified the principal issues of the case as:

(1) Did the purchase price paid to the seller come from coconut levy funds?

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[8] *Id.* at 533-537.

[9] *Id.* at 591-609.

[10] *Id.* at 606-609, 621-623.

[11] *Id.* at 626-641.

(a) May the proceeds of loans from UCPB be deemed as coming from coconut levy funds?

(2) Assuming that the price paid for the acquisition of the shares of stock came from coconut levy funds, are the shares of stock subject to be "returned and reconveyed" to plaintiff?[12]

The respondents also stated in their pre-trial brief that they intended to present the following evidence:

4.02 Herein defendants intend to present the following evidence:

x x x x x x x x x

(b) Proposed Exhibits _____, _______, _______,

Records of the United Coconut Planters Bank which would show borrowings of the companies listed in Annexes "A" and "B", or companies associated or affiliated with them, which were used **to source payment of the shares of stock** of the San Miguel Corporation subject of this case. [emphasis supplied]

4.03. Witnesses.

x x x x x x x x x

(b) A **representative of the United Coconut Planters Bank** who will testify in regard the **loans which were used to source the payment of the purchase price** of the SMC shares of stock.

(c) A **representative of the CIIF Oil Mills** who will testify in regard the loans or **credit advances which were used to source the payment of the purchase price** of the SMC shares of stock.[13] [emphasis ours]

The Republic filed its *Pre-Trial Brief* on May 15, 2000.[14] Among the documents attached (with emphasis supplied) were:

(1) Commission on Audit (*COA*) **report** on the UCPB dated 1986;

(2) Affidavits of Attys. Jose C. Concepcion, Florentino M. Herrera III, Teresita J. Herbosa, Teodoro D. Regala, Victoria

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[12] *Id.* at 633.

[13] *Id.* at 635-636.

[14] Sandiganbayan Records, Volume 6, pp. 29-891.

de los Reyes, Manuel R. Roxas, Rogelio A. Vinluan, Eduardo U. Escueta, Franklin M. Drilon, stating that he or she was merely a nominee stockholder of some of the respondent corporations and that he or she did not have a proprietary interest in the shares of the respondent corporations;

(3) Blank Declarations of Trust and Assignment executed by some of the interlocking directors stating that their ownership of the shares of the respondent corporations were assigned to them nominally and that they were held for the benefit of an unnamed assignee;

(4) Voting Trust Agreements between Cojuangco as trustee and some of the interlocking directors of the respondent corporations as trustors over the SMC shares owned by respondents Silver Leaf Plantation, Meadowlark Plantations, Inc., and Primavera Farms, Inc.

(5) the **Memorandum of Agreement between Cojuangco and PCA**, executed on May 1975, wherein PCA purchased Cojuangco's options shares in First United Bank (*FUB*), which later became UCPB; and

(6) Statements of Assets and Liabilities of Cojuangco for the years 1973, 1976, 1978, and 1982; and

(7) the **Summation Analysis of Wealth and Income** of Cojuangco.

The **testimonies of the several potential witnesses** were also cited, among them, the COA officers regarding the COA reports, the interlocking directors of the respondent corporations, the Corporate Secretary of SMC, the Corporate Secretary and the Comptroller of UCPB, and the Chairman of the Securities and Exchange Commission (*SEC*).

D. Motions for Partial Summary Judgment

1. For the CIIF block of SMC Shares

On July 25, 2002, the Republic filed a *Motion for Judgment on the Pleadings and/or Summary Judgment over the CIIF*

Block of SMC shares.[15] Cojuangco and the Coconut Producers Federation of the Philippines (*COCOFED, et al.*[16]), among others, filed an *Opposition* to the Republic's motion.[17]

In his Opposition,[18] Cojuangco continued to maintain his position that he had no direct interest over the CIIF shares, but opposed the motion based on procedural grounds.

COCOFED claimed ownership over the CIIF shares based on the provisions of Presidential Decree (*PD*) Nos. 961 and 1468, which authorize the free distribution of the investments made by UCPB, in the form of shares of stock, to the coconut farmers.[19] COCOFED, *et al.* claimed that since its members (farmers/producers) are the registered and/or beneficial owners of at least 51% of the capital stock of the CIIF Companies that wholly own the 14 Holding Companies, which, in turn, are the registered owners of the CIIF block of SMC shares, then they are the ultimate beneficial owners of these shares.[20]

On February 23, 2004, the Sandiganbayan issued an Order[21] outlining what it considers as admitted facts or facts that appear without substantial controversy, among others:

> (1) The CIIF is an accumulation of a portion of the Coconut Consumers Stabilization Fund (*CCSF*) and the Coconut Industry Development Fund (*CIDF*), which PD Nos. 961 and 1468 require to be utilized by the UCPB for investment, in the form of shares of stock in corporations engaged in industries and commercial activities relating to the coconut and palm

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[15] Sandiganbayan Records, Volume 9, pp. 205-247.

[16] Maria Clara L. Lobregat, Jose R. Eleazar, Jr., Domingo Espina, Jose Gomez, Celestino Sabate, Manuel del Rosario, Jose Martinez, Jr., and Eladio Chatto.

[17] Sandiganbayan Records, Volume 9, pp. 344-380, 394-417.

[18] Sandiganbayan Records, Volume 9, pp. 344-380.

[19] *Id.*, Volume 12, p. 495.

[20] *Id.* at 522.

[21] *Id.*, Volume 11, pp. 504-508.

oils industry. The corporations where the CIIF has been invested are referred to as the CIIF Companies.

(2) Using the CIIF, the UCPB acquired controlling interests in the CIIF Companies using the CIIF.

(3) The UCPB distributed part of the investments made in the CIIF Companies to identified coconut farmers and retained part as CIIF Administrator. These coconut farmers are the registered controlling stockholders of the CIIF Companies.

(4) The 14 Holding Companies were incorporated to hold the SMC shares.

(5) All the outstanding capital stock of the 14 Holding Companies is owned by the CIIF Companies.

(6) UCPB, as CIIF Administrator, authorized the CIIF Companies to acquire 33, 133, 266 shares of stock of SMC.

(7) To finance the acquisition of the SMC shares, the fourteen (14) Holding Companies used their incorporating equity and borrowed funds from UCPB. The CIIF Companies also extended cash advances to the 14 Holding Companies.

(8) The 27% CIIF block of SMC shares are registered in the names of the 14 Holding Companies, which are wholly owned by the six CIIF Companies;

(9) Cojuangco disclaims any interest in the 27% CIIF Block of SMC shares.

Cojuangco filed his *Comment* to the Sandiganbayan Order, admitting that he has no direct interest over the CIIF block of SMC shares; but he claims indirect interest over these shares as a stockholder of SMC.[22]

On May 7, 2004, the Sandiganbayan granted the Republic's motion and ordered the reconveyance of the CIIF block of SMC shares to the government.[23]

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[22] Sandiganbayan Records, Volume 12, p. 78.

[23] *Id.*, Volume 12, pp. 469-533.

The Sandiganbayan rejected the statutory bases of COCOFED's assertion of ownership. *First*, it declared as unconstitutional the provisions of PD Nos. 755, 961, and 1468 — that uniformly mandate that the CCSF and the CIDF "shall not be construed or interpreted, under any law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government" and that "the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their private capacities"[24] — for violation of Section 2(1), Article XI(D) of the 1973 Constitution[25] (similar to Article IX-D, Section 2 of the 1987 Constitution[26]).

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[24] Sandiganbayan Records, Volume 12, pp. 517-521.

[25] Section 2. The Commission on Audit shall have the following powers and functions:

> 1. Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, to the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations; keep the general accounts of the government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive or extravagant expenditures or use of funds and property.

[26] Article IX-D Section 2(1) of the 1987 Constitution reads:

> The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post- audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep

Second, the Sandiganbayan, relying on *Republic v. COCOFED*[27] held that the registered owners of shares acquired with the use of public funds have the burden of proving how those shares have become their legitimate private property. The Sandiganbayan ruled that the provisions in PD No. 755, 961 and 1468 — mandating the free distribution of the UCPB shares and of the bank's investments in the CIIF Companies to the coconut farmers — are fatally defective for failing to show how the avowed public purpose of the same laws could be achieved by the free distribution of shares. It added that the laws failed to provide sufficient standards to guide the PCA in promulgating rules and regulations to effect the free distribution. The Sandiganbayan categorically stated:

> The investments made by UCPB in CIIF Companies are required by [P.D. 755, 961 and 1468] to be equally distributed **for free** by [UCPB] to the coconut farmers. The public purpose sought to be served by the free distribution of the shares of stock acquired with the use of public funds is not evident in [said P.D.s]. More specifically, it is not clear how private ownership of the shares of stock acquired with public funds could serve a public purpose. **The mode of distribution of the shares of stock also left much room for diversion of assets acquired through public funds into private uses or to serve directly private interests, contrary to the Constitution.** [emphasis ours]

The Sandiganbayan concluded that since the CIIF Companies were acquired with public funds, the 14 Holding Companies and all their assets, including the CIIF block of SMC shares, being public in character, belong to the government, in trust for the ultimate beneficiaries — the coconut farmers.

Cojuangco moved for reconsideration, but he was rebuffed by the Sandiganbayan in its December 28, 2004 resolution.[28]

the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[27] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462. The Court held that coconut levy funds are not only affected with public interest but are *prima facie* public funds.

[28] Sandiganbayan Records, Volume 13, pp. 521-538.

The resolution lapsed to finality and was subsequently implemented.

2. For the Cojuangco block of SMC shares

The Republic likewise filed on July 11, 2003 a *Motion for Partial Summary Judgment [Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies].*[29]

In this motion, the petitioner claimed that Cojuangco acquired approximately 20% of the outstanding capital stock of SMC in 1983. Of these shares, 18% of the outstanding shares were registered in the names of the respondent corporations. All the shares were claimed to have been acquired with public funds from the coconut levy. At the time the shares were bought, Cojuangco was a director of UCPB and the PCA. Thus, he breached his fiduciary duty as a director when he diverted coconut levy funds, intended for the use of coconut farmers, to fund his own purchase of SMC shares.

The respondents filed an *Opposition*[30] to the motion for partial summary judgment raising, among other arguments, that their admission that loans from UCPB were used to pay for the SMC shares did not constitute an admission that the SMC shares were acquired with coconut levy funds since the ownership of the money loaned transfers to the borrower.[31]

On October 2, 2003, the Republic filed a *Reply* to the respondents' opposition. Among the documents it attached as Annexes "A" to "F" were original copies of **certification by the Corporate Secretary of the UCPB and CIIF Oil Mills**[32]

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[29] *Rollo* (G.R. No 180702) Volume II, pp. 642-684.

[30] Dated August 14, 2003, *id.* at 685-738.

[31] *Id.* at 722-724.

[32] Southern Luzon Coconut Oil Mills (SOLCOM), Cagayan de Oro Oil Co., Inc (CAGAOIL), Iligan Coconut Industries Inc. (ILICOCO), San Pablo Manufacturing Corporation (SPMC), Granexport Manufacturing Corporation (GRANEX) and Legaspi Oil Co., Inc. (LEGOIL), *id.* at 772.

showing that Cojuangco had been among its officers and directors from 1983 to 1986, particularly:[33]

COMPANY	POSITION	PERIOD
Legaspi Oil Company	President	June 22, 1983 to May 29, 1985
San Pablo Manufacturing Corporation	President	June 22, 1983 to May 29, 1985
Granexport Manufacturing Corporation	President	June 22, 1983 to October 15, 1986
United Coconut Planters Bank	**President**	**1983 and 1984**

On October 21, 2003, the Sandiganbayan conducted a hearing on the motion for partial summary judgment. During the proceedings, the Republic clarified its claim that **the SMC shares were ill-gotten wealth because they were acquired through UCPB loans, CIIF Oil Mills or other coconut levy funded entities.**[34] **The respondents, on the other hand, admitted**

[33] *Id.* at 808-819.

[34] *Rollo* (G.R. No. 169203), pp. 360-361. The transcript of the proceedings read:

JUSTICE VILLARUZ:

The question of Mr. Mendoza is, are you disputing the fact that the shares were acquired from loans?

ASG DEL ROSARIO

No. We are not disputing that, Your Honor.

JUSTICE VILLARUZ

Makes the shares ill-gotten?

ASG DEL ROSARIO

Yes, Your Honor. The shares are ill-gotten despite the fact that loans were used. So that is a conclusion which the Court may make from the undisputed facts.

JUSTICE VILLARUZ

You mean to say that even if the loans were not sourced from UCPB, you would still say that the shares are ill-gotten?

that the proceeds used in acquiring the SMC shares were *partly* derived from UCPB loans.[35]

On December 10, 2004, the Sandiganbayan issued a Resolution[36] **denying** the Republic's motion for summary judgment. It considered as **undisputed facts** the following:

(1) Cojuangco admitted that he acquired in 1983 approximately 20% of the outstanding SMC shares, which are registered in his name and in the name of 44 corporate respondents;

(2) Cojuangco used the proceeds of loans obtained from various sources in purchasing the said block of shares;

(3) the block of shares were purchased by Cojuangco from the Ayala Corporation and several other individuals and entities;

ASG DEL ROSARIO

No, Your Honor. It is ill gotten precisely because it was sourced from the UCPB.

JUSTICE VILLARUZ

You are begging the question. The Court is asking, if the shares were acquired from loans other than UCPB, would you say that the shares are ill gotten?

ASG DEL ROSARIO

No more, Your Honor, unless the source would be from a CIIF Oil Mills fund or other coco levy fund, Your Honor.

JUSTICE VILLARUZ

But it is your contention that the shares may have been acquired from proceeds of loan from UCPB and the shares ergo are ill gotten, is it not?

ASG DEL ROSARIO

Yes, Your Honor.

[35] *Id.* at 365. In the transcript of the notes taken during the hearing held on October 21, 2003 before the Sandiganbayan, the respondents' counsel Atty. Estelito Mendoza stated:

We are fortunate and gratified that plaintiff makes it clear now that their cause of action is based solely based on their cause of action that these shares are ill-gotten wealth based solely on their assertion that the funds used to pay for the shares were borrowed from the United Coconut Planters Bank. **We are saying some of the funds but not all of the funds, full stop.** (Emphasis ours.)

[36] *Rollo* (G.R. No. 180702) Volume II, pp. 821-835.

(4) the total of 27,198,545 shares of SMC stock at the time of the sequestration in 1989 has grown to 108,846,948 shares.[37]

On the other hand, the Sandiganbayan determined the following to be **disputed facts**:

(1) What are the various sources of funds, which the defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?

(2) Whether or not such funds acquired from alleged "various sources" can be considered coconut levy funds;

(3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PCA, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;

(4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?[38]

E. <u>The Hearing</u>

During the hearing scheduled on August 8, 2006, the Republic manifested through its counsel that it would no longer present testimonial evidence and instead asked that the following documents be marked and taken judicial notice of by the court:

(1) Cojuangco's *Answer* to the Third Amended Complaint (Subdivided) dated June 23, 1999 in Civil Case No. 0033-F;

(2) Defendant CIIF Oil Mills and 14 CIIF Holding Companies' *Answer* dated January 5, 2000;

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[37] *Id.* at 831-832.

[38] *Id.* at 833.

(3) Cojuangco's *Pre-Trial Brief* dated February 11, 2000, in the same case;

(4) Republic's *Motion for Summary Judgment [Re: Shares in San Miguel Corporation registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies]* dated July 11, 2003, also in the same case;

(5) PD No. 961, dated July 11, 1976, entitled "An Act to Codify the Laws Dealing with the Development of the Coconut and other Palm Oil Industry and for Other Purposes";

(6) PD No. 755, dated July 29, 1975, entitled "Approving the Credit Policy for the Coconut Industry as Recommended by the PCA and Providing Funds Therefore";

(7) PD No. 1468, dated June 11, 1978, entitled "The Revised Coconut Industry Code";

(8) Decision of the Supreme Court in *Republic v. Sandiganbayan*, G.R. No. 96073, January 23, 1995 (240 SCRA 376); and

(9) Decision of the Supreme Court in *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001 (372 SCRA 462).

The Republic likewise filed a *Manifestation of Purposes*,[39] dated August 28, 2006, which the court considered as an offer of documentary evidence. The Sandiganbayan issued a Resolution on September 18, 2006[40] admitting all the exhibits that the Republic offered.

On November 24, 2006, the Republic rested its case. The respondents' counsel, for their part, manifested that they would no longer present controverting evidence, since the Republic

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[39] Sandiganbayan Records, Volume 17, pp. 104-126.

[40] Sandiganbayan Records, Volume 17, pp. 130-A – 130-B.

had not proven its allegations; instead, the respondents offered documentary evidence to support their counterclaims.[41]

In an Order dated December 5, 2006,[42] the graft court admitted all the exhibits that the respondents offered. The trial ended on the same date and the parties were ordered to file their respective memoranda. Thereafter, the case was considered submitted for resolution.

F. <u>The Sandiganbayan Decision</u>

On November 28, 2007, the Sandiganbayan issued its Decision[43] denying the Republic's claims, as well as the respondents' counterclaims. It ruled that the Republic had not been able to prove that the respondents acquired the SMC shares using public funds or that Cojuangco abused his position to acquire these shares. It pointed out the lack of paper trail or testimonies that would establish the illegal scheme that the respondents allegedly engaged in. It noted that even during pre-trial, the Republic had not been able to identify the documents that it would present.

The present petitions present to this Court the **core issue** for resolution: **whether the government's claim over the subject shares is meritorious, based on the evidence on record.**

<u>II. REFLECTIONS</u>

A. <u>Preliminary Considerations</u>

A.1. The Republic's Claim for Recovery: A Return to the Wider View

The Republic's quest, as expressed in its complaint against Cojuangco and the other respondents for the recovery of SMC shares, ***focused on Cojuangco*** from the very beginning; its objective was the recovery of what it considered to be Cojuangco's ***ill-gotten wealth lodged in the SMC shares***. Thus, the **first**

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[41] *Id.* at 199-211.

[42] *Id.* at 249.

[43] *Rollo* (G.R. No. 180702), Volume 1, pp. 78-131.

cause of action was for the recovery of properties that were alleged to be manifestly disproportionate to Cojuangco's income. The **second** was to recover the properties that Cojuangco allegedly acquired in breach of the public trust through abuse of the power he enjoyed because of his close association with former President Marcos.

Somewhere in the course of prosecuting the case, the Republic dropped its pursuit of the first cause of action. Thus, this claim proved to be a road not taken for the government. The **second cause of action**, on the other hand and for purposes perhaps of an orderly and logical handling, was divided into two aspects with different set of objectives. The **first aspect** identified and concentrated on the CIIF block of SMC shares registered in the names of 14 holding companies (which in turn were formed by the six CIIF Oil Mills where UCPB had made coconut levy fund investments). The **second**, identified as the Cojuangco block of SMC shares, concentrated on Cojuangco and the companies he established to purchase the SMC shares. The loans from the UCPB and the advances from the CIIF Oil Mills were alleged to be the conduits through which coconut levy funds were channeled and used to pay for the purchased SMC shares.

After pre-trial, the Republic separately moved for partial summary judgments for the CIIF block and for the Cojuangco block, believing — rightly or wrongly — that enough undisputed facts existed to justify a judgment on the merits. The motion covering the CIIF block met favorable response from the Sandiganbayan, whose award of the shares to the Republic did not merit any contrary response from Cojuangco; faced with the Sandiganbayan judgment, the opposition that Cojuangco and the other respondents initially showed simply melted. Thus, this aspect of the case faded into the background, together with the first cause of action for unjust enrichment. The Cojuangco block aspect, on the other hand, continued to be litigated under the theory that Cojuangco amassed these shares through abuse of power made possible by his close association with the martial law regime.

In another turn of events, the counsels for the Republic chose not to go to trial **despite** an earlier rejection of its motion for summary judgment and the unmistakable signals from the Sandiganbayan that it considered the case unripe for submission for decision. Instead, the Republic served a *Manifestation of Purpose* that the Sandiganbayan chose to regard as its formal offer of documentary evidence. Faced with this move, Cojuangco likewise chose not to submit evidence on the theory that the Republic's **submission**, composed mainly of ***pleadings filed, decided cases*** and ***laws***, did not at all prove the allegations of the remaining aspect of the complaint.

A reminder of the wider view of the case as originally filed is offered as an opening in these Reflections in order to ensure that the original big picture is not forgotten. The original picture the Republic painted through the complaint is about ***a series of interconnected moves — both at the CIIF end and from the end of Cojuangco, the UCPB, and the allied Cojuangco companies — where Cojuangco was at the center*** to use the coconut levy funds, or the companies funded or supported by coconut levy funds, for the purchase of SMC shares. While the Republic itself, wittingly or unwittingly, has partitioned this big picture into a forgotten first cause of action and a second cause of action that was divided into two aspects, ***this big picture and the grand and coordinated moves that it drew at the beginning should remain in mind as a background in viewing the remaining aspect under litigation.*** This background may be useful in sifting through the facts established by the Partial Summary Judgment on the CIIF block of SMC shares for use in considering the present Cojuangco block aspect; **facts established between the same parties in one aspect of the same case should be conclusive in the remaining aspect of the case.** Advances from the CIIF Oil Mills were, after all, admitted by Cojuangco, as discussed below; the interconnectedness of the two aspects of the second cause of action are plain and evident and only remains to be linked by evidence. These established facts may also somehow contribute to a deeper understanding of the turn of events in the Republic's handling of and the developments in the case, leading to an

unappealed partial summary judgment and the virtual refusal of the Republic's counsels to proceed to trial. Certainly, these established facts as well as the attendant circumstances and developments in the remaining Cojuangco block aspect of the case can be very useful in appreciating and judging the actions of the lawyers of the Republic in terms of the competence, degree of care and even the integrity they exhibited in handling the case.

A.2. What is at stake – value of Cojuangco block of SMC shares

The Republic's Third Amended Complaint, filed in 1995, claimed ownership over the 16,276,545 of SMC shares that were allegedly acquired by Cojuangco in 1983 with the use of coconut levy funds. At the time of acquisition, this Cojuangco block of SMC shares constituted 20% of the total shareholdings of SMC and was purchased for US$49 million.[44] Because of the issuance of new shares, the Cojuangco block's shareholding was reduced to 17% in 2007[45] and 15% in 2010.[46] **As of December 2010, the remaining 15% shareholding translates to 493,375,183 common shares, and is worth about ₱84.56 billion**[47] **or US$1.86 billion.**[48] At the current exchange

[44] Equivalent to ₱539 million, based on the June 23, 1983 currency exchange rate of ₱11.00 per US$ 1.00, International Economics: Historical Exchange Rate Regime of Asian Countries, at http://intl.econ.cuhk.hk/exchange rate_regime/index.php?cid=1, last visited April 7, 2011.

[45] Artemio Panganiban, *Danding wins San Miguel but losses Cocobank*, With Due Respect, Philippine Daily Inquirer, December 12, 2007, at http://opinion.inquirer.net/inquireropinion/columns/view/20071209-105737/Danding_wins_San_Miguel_but_losses_Cocobank, last visited April 6, 2011.

[46] Rey Eñano, *San Miguel's Cojuangco waiting for the right price*, Manila Standard Today, December 2, 2010, at http://www. manila standard today.com/insideBusop.htm?f=2010/december/2/reyenano.isx&d=2010/december/2, last visited April 6, 2011.

[47] Based on SMC Class A common share closing price of ₱171.4 on April 7, 2011, Philippine Star.

[48] Based on the April 7, 2011 currency exchange rate of ₱ 45.43 per USD 1.00.

rate,[49] the original acquisition cost of the shares is now equivalent to ₱2.23 billion, which means that over the past 27 years, the shares have ballooned 38 times its original value.

For added perspective, the shares' acquisition cost of US$49 million was equivalent to **0.94% of the national budget for 1982**;[50] it was also equivalent to 12.29% of the budget allocated for education,[51] 307.83% of the budget for social service and development,[52] and 25.07% of the budget for health.[53] The present worth of the shares (₱84.56 billion) is equivalent to **5.49% of the entire national budget for 2010**.[54] This is also equivalent to about half the 2010 appropriation for education or 48.94%, 5.83% of the budget for social welfare and development, and 2.97% of the budget for health.

The SMC is one of the biggest conglomerates in the country. It is the leading food, beverage and packaging company, now with diversified interests and substantial investments in non-related industries like power and other utilities, banking, mining, energy, tollways, infrastructure, and airports. According to SMC's Annual Report for 2009, its total assets amount to ₱438.5 billion, and its income was ₱57.8 billion — double the amount appropriated in 2010 for health and social welfare, and one-third of that for education. SMC generates nearly 4% of the gross national product and pays 6% of the total taxes collected.[55]

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[49] *Ibid.*

[50] The national budget for fiscal year 1982 was ₱57,091,994,000.00; data for 1983 were unavailable.

[51] Total amount appropriated for the Ministry of Education, Culture and Sports for Fiscal Year 1982 was ₱ 4,387,012,000.00.

[52] Total amount appropriated for the Ministry of Social Service and Development for Fiscal Year 1982 was ₱ 175,099,000.00.

[53] Total amount appropriated for the Ministry of Health for Fiscal Year 1982 was ₱ 2,149,789,000.00.

[54] The national budget for fiscal year 2010 is ₱ 1,540,000,000.00.

[55] Jonathan Sprague and Raissa Espinosa-Robles, *Battle for San Mig*, at http://www-cgi.cnn.com/ASIANOW/asiaweek/97/1212/biz1.html, last visited April 7, 2011.

Certainly, the State's recovery of the SMC shares, if substantiated, would translate into a significant increase in the government's assets and would be a steady source of income. *But the State's interest in SMC goes beyond these numerical figures.* The SMC is a company that has been in existence for over 120 years. It is one company that has integrated itself in the lives of the Filipino people. Starting in 1890 with beer as its sole product, now its "product portfolio includes over 400 products"[56] — many of which the Filipino people have grown up with and have become parts of their lives. No Filipino would dispute SMC's claim that it "has generated strong consumer loyalty through brands that are among the most formidable in the Philippine food and beverage industry." Its flagship product — the San Miguel Beer — is in fact known worldwide. Indeed, SMC's internationalization efforts, by extending operations to Asia and Australia, have also become a source of national pride.

From these perspectives, the Republic undoubtedly has a strong *economic* interest to protect, for itself and for the Filipino people, particularly for the coconut farmers. Beyond these interests, *the integrity of government processes and the people's political will* to take the high moral road are likewise being tested in this long drawn-out case. This is not to say that a reversion as demanded by government should take place. Beyond reversion or non-reversion is the necessity of *putting a dignified closure* to nagging questions that the nation has carried since the end of the Marcos years.

With these reminders made, I go back to the consolidated petitions before us.

B. Cojuangco's Admissions on Sources of Funds for the SMC shares Purchase

The Republic's claim over the Cojuangco block of shares is based on the premise that public funds were used for the purchase of these shares. While an admission exists on the record on the

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[56] http://www.sanmiguel.com.ph/Content.aspx?MID=0&coid= 1&navID=12, last visited April 7, 2011.

part of both parties that Cojuangco acquired the shares using UCPB loans and CIIF advances, no unanimity exists on whether these loans are in the nature of public funds. Justice Carpio Morales' *ponencia* and Justice Bersamin's dissent offer contrary views on whether, to begin with, an admission has been made that the UCPB loans and the CIIF Oil Mills advances were used for the purchase of the shares.

I agree with Justice Carpio Morales that Cojuangco did indeed admit in his pre-trial brief that the funds used in the purchase of SMC shares were sourced from UCPB loans and CIIF Oil Mills advances.

B.1. Cojuangco's Admission in his Pre-Trial Brief

Cojuangco's *Pre-Trial Brief* made a categorical statement of the evidence he would present at the trial. This statement is quoted verbatim at page 5 hereof.

He categorically said that he would introduce "Records of the United Coconut Planters Bank which would show borrowings of the companies listed in **Annexes "A" [referring to the 14 CIIF holding companies] and "B" [referring to the 43 or 44 respondent companies]** x x x used to source payment of the shares of stock of the San Miguel Corporation."

He likewise represented that he would call as witnesses a "**representative of the United Coconut Planters Bank** who will testify in regard the **loans which were used to source the payment of the purchase price** of the SMC shares of stock" and a "**representative of the CIIF Oil Mills** who will testify in regard the loans or **credit advances which were used to source the payment of the purchase price** of the SMC shares of stock."[57]

Justice Bersamin dismisses these statements as ***mere proposals*** of Cojuangco which do not constitute an admission that the funds in the purchase of the SMC shares came from the UCPB loans and the CIIF Oil Mills advances. "[T]he statement were

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[57] *Rollo* (G.R. No. 180702), Volume I, pp. 137-138.

merely being proposed, that is, they were not yet offered or were not yet intended as admissions of any fact stated therein."[58]

With due respect, Justice Bersamin's contention fails to consider a party's intent and representation in stipulating on the evidence he proposes to present during trial; by his stipulation, the party thereby ***claims — and thus admits*** — that the evidence he pointed to would substantiate the material averments in his pleadings.

In his *Answer*, Cojuangco alleged that:

5.02.b. Herein defendant admits paragraph 14(b) of the complaint[59] insofar as it is alleged therein that in 1983, he acquired shares of stock representing approximately 20% of the outstanding capital stock of San Miguel Corporation x x x. Herein defendant further denies the allegation, implication or insinuation, whether contained in paragraph 14(b) or in any other portion of the complaint that he acquired the aforesaid interest in San Miguel Corporation with the use of coconut levy funds, or in any manner contrary to law, the truth being that herein **defendant acquired said shares of stock using the proceeds of loans obtained by herein defendant from various sources.**

Cojuangco did not need to enumerate in this *Answer* his alleged various sources of loans, as these are evidentiary matters that need not be actually introduced until the trial. At the time he filed his *Answer*, it was sufficient for him to aver, as his defense, that the coconut levy funds were not used to fund the purchase of the SMC shares; rather, he obtained the funds from "various sources." What these various sources are, are matters of evidence that he would introduce.

In his *Pre-Trial Brief*, however, what he *generally* claimed in his Answer became *concrete* when he represented that these

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[58] *J*. Bersamin's *Revised Reflections*, p. 59.

[59] Par. 14 (b) of the Republic's Complaint alleged:

(b) He [Cojuangco] entered SMC in early 1983 when he bought most of the 20 million shares of Enrique Zobel owned in the company. The shares, worth $49 million, represented 20% of SMC;

pieces of evidence consist of UCPB documents and testimonies of witnesses from UCPB and CIIF Oil Mills. As no evidence can be considered during trial unless they have been identified during pre-trial, this identified evidence substantiating the material allegation in his *Answer* is effectively an admission of what the various sources of funding were. In other words, the respondents identified the various sources of funds alleged in his *Answer* when he offered in his *Pre-Trial Brief* to support this allegation through documents from UCPB and the testimonies of witnesses from UCPB and CIIF Oil Mills on loan and credit advances. The statement in Cojuangco's *Pre-Trial Brief* is thus not a mere proposal but a direct admission of what would support his material allegation. Indeed, it is ridiculous for a party to stipulate on documents and witnesses he would present as evidence if these were not intended to support his position. To be sure, a defendant may choose not to present evidence should the plaintiff fail to support its claims, but his desistance is not due to any change of position but due to the lack of need to support his position; a defendant cannot radically change his theory of the case and deny his earlier statements depending on what the plaintiffs present as evidence.

B.2. Admission on October 21, 2003 by Cojuangco's Counsel

During the October 21, 2003 hearing, the Sandiganbayan sought to clarify whether Cojuangco admitted that the SMC shares were acquired using UCPB loans. Atty. Estelito Mendoza, counsel for Cojuangco, initially declared that the statement in their *Pre-Trial Brief* did not amount to an admission. When probed by the court, Atty. Mendoza sought clarification from the counsel for the Republic if it theorizes that the SMC shares are "ill-gotten wealth because they were paid with use of loans." Counsel for the Republic declared that precisely because the loans came from UCPB/CIIF Oil Mills that made them ill gotten. Atty. Mendoza then proceeded to state that

ATTY. MENDOZA:

Records which would show borrowings of the companies listed in Annexes A and B or companies affiliated which were used to source funds. Well, we do not say how much, we do not say when, we do not say whether this has been all paid back. x x x We are fortunate and gratified that plaintiff makes it clear now that their cause of action is solely based on their cause of action [sic] that these shares are ill-gotten wealth based solely on their assertion now that the funds used to pay for the shares were borrowed from the United Coconut Planters Bank. So that is the position of the plaintiff. **We are saying some of the funds but not all of the funds, full stop.**[60]

At the very least, Atty. Mendoza's statement was an admission that UCPB loans and CIIF Oil Mills advances were used as funding to purchase a portion of the subject SMC shares. As to how much was the loan, when it was taken, and if it was already paid, however, remained to be proven.

B.3. Implied Admission through Failure to Deny

Cojuangco also failed to specifically deny the allegation in paragraph 14(l) of the Republic's *Complaint* that UCPB and CIIF Oil Mills loans were used to purchase SMC stocks. Under the Rules of Court,[61] what is not denied is deemed admitted.

The *Complaint* reads:

14. x x x (l) These companies, which ACCRA Law Offices organized for Defendant Cojuangco to be able to control more than 60% of SMC shares [referring to those enumerated in paragraph (k), which corresponds to the 44 Cojuangco-affiliated companies], were funded by institutions which depended upon the coconut levy such as the UCPB, UNICOM, United Coconut Planters Life Assurance Corp. (COCOLIFE), among others, Cojuangco and his ACCRA lawyers used the funds from 6 large coconut oil mills and 10 copra trading companies **to borrow money from the UCPB and purchase** these holding companies **and the SMC stocks.** Cojuangco used $150 million from the coconut levy, broken down as follows:

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[60] *Rollo* (G.R. No. 169203), p. 365.

[61] RULES OF COURT, Rule 8, Section 11.

Amount (in millions)	Source	Purpose
$22.26	Oil mills	Equity in holding companies
$65.6	Oil mills	Loan to holding companies
$61.2	UCPB	Loan to holding companies

The entire amount, therefore, came from the coconut levy, some passing through the Unicom oil mills, others directly from the UCPB.

Cojuangco answered the above allegations by stating that:

5.02.1. Herein defendant denies paragraph 14(l) of the complaint, the truth being that the companies incorporated in his behalf by the ACCRA Law Office cumulatively own less than 20% of the outstanding capital stock of SMC, that herein **defendant did not use the coconut levy funds, or any part thereof, to acquire his shareholdings in SMC.**

This bare statement that he did not use coconut levy funds to acquire his shareholding in SMC is a mere general allegation that does not negate the Republic's material averment that UCPB loans, among others, funded the purchase of the SMC shares. Section 10, Rule 8 of the Rules of Court requires a defendant to "specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial." Otherwise, material averments in the complaint are deemed admitted.[62] It was only in his *Pre-Trial Brief* that Cojuangco qualified his general averment that the SMC shares were not bought with coconut levy funds.

Cojuangco questioned the characterization of the UCPB loans by contending that these became private in nature based on Civil Code provisions on Loan only after the Republic filed its motion for summary judgment. But even this contention (that the UCPB loans are private in character) implies that Cojuangco availed of UCPB loans.

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[62] RULES OF COURT, Rule 8, Section 11.

C. What loans and advances did Cojuangco secure?

While I may agree with the *ponencia* that Cojuangco indeed admitted that he secured loans from UCPB and advances from the CIIF Oil Mills, I disagree with its conclusion that the totality of the SMC shares Cojuangco purchased should totally revert to the Republic in the absence of more specifics on the extent of the loan and advances made and the purchase effected. Between admissions that purchases were made and that loans and advances were secured to finance these purchases, are big factual and evidentiary gaps on the extent, manner, and other details of the loans, the advances and the purchases made. These are critical parts of the transactions claimed to be the basis for reconveyance and are parts of the cause of action the Republic, as plaintiff, has to prove. *These are component parts of the cause of action that the plaintiff has the burden of proving before the burden of evidence shifts to the defendant.* As will be discussed below, the manner the loans and advances were secured are critical elements to identify the SMC shares as ill-gotten wealth that the Republic can recover. **All these do not appear to have been proven through the evidence the Republic offered to support its case.**

D. The public nature of the sources of funds used to purchase the SMC shares

Cojuangco's admission that he availed of UCPB loans and CIIF Oil Mills advances does not also automatically characterize these proceeds as ill-gotten wealth. In his Revised Reflections, Justice Bersamin enumerates the elements that would establish that assets and properties are ill-gotten wealth under Executive Order (*EO*) No. 1 and 2: (1) they must have **originated from the government itself;** and (2) they must have been **taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means*.**[63] Justice Bersamin identified these elements by considering the concept of "ill-gotten wealth" as defined by law[64] and by

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[63] *J.* Bersamin's *Revised Reflections*, p. 45.

[64] Citing EO Nos. 1 and 2 (1986).

jurisprudence.[65] Given these elements, Cojuangco's admission as to the source of the funds used to purchase the SMC shares, by itself, would not make a case for forfeiture of ill-gotten wealth for the Republic based on its second cause of action (under EO No. 1 and 2). Apart from the personality of the defendant and the manner of taking, the sources of the funds — the UCPB and CIIF Oil Mills loans and credit advances — must be established as coming from the "vast resources of the government" that were taken by "illegal means."

D.1.The nature of the CIIF Oil Mills credit advances

The determination of whether CIIF Oil Mills advances are public funds does not present a major hurdle. A simple tracing of the organization and funding of the CIIF Oil Mills to the coconut levy fund establishes the link that marks the fund as public.

The coconut levy fund is a collective term referring to various funds that came from "levies on sale of copra or equivalent coconut products exacted for the most part from coconut farmers." Specifically, the coconut levy fund refers to:

(1) the Coconut Investment Fund (*CIF*) created under R.A. No. 6260; the Coconut Consumers Stabilization Fund (*CCSF*) created under PD 276;

(2) the Coconut Industry Development Fund (*CIDF*) created under PD 582; and

(3) the Coconut Industry Stabilization Fund (*CISF*) created under PD 1841.[66]

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[65] Citing *Bataan Shipyard & Engineering Co., Inc v. Presidential Commission on Good Government* (G.R. No. 75885, May 27, 1987, 150 SCRA 181, 209), *Presidential Commission on Good Government v. Lucio Tan* (G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, 481), and *Chavez v. Presidential Commission on Good Government* (G.R. No. 130716, December 9, 1998, 299 SCRA 744, 768-769).

[66] *Leyson, Jr. v. Office of the Ombudsman*, G.R. No. 134990, April 27, 2000, 331 SCRA 227, 233-234.

The CCSF was created in 1973 and was set up to "subsidize the sale of coconut-based products at prices set by the Price Control Council."[67] On the other hand, the CIDF was created in 1974 to "finance the establishment, operation, and maintenance of a hybrid coconut seednut farm x x x (which shall be used for the) nationwide coconut replanting program."[68] Pursuant to PD No. 1468 (which revised PD No. 961 or the Coconut Industry Code), portions of the CCSF and the CIDF that were not required for the replanting program and other authorized projects shall be used to "make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oil industries."[69] The surplus of the CCSF and the CIDF came to be known as the Coconut Industry Investment Fund or CIIF, and the corporations in which the CIIF was invested were known as CIIF companies. In the 1993 *Republic v. Sandiganbayan*[70] declared that —

> "x x x coconut levy funds being clearly affected with public interest, it follows that the corporations formed and organized from those funds, and all assets acquired therefrom, should also be regarded as clearly affected with public interest."

Since the CIIF Oil Mills and the holding companies were organized/acquired and funded using the coconut levy funds, it follows that the oil mills and all their assets, including their investments, are public funds. This is the basic reason underlying the partial judgment on the CIIF block of SMC shares; the funds used in the purchase of these shares are public so that the shares purchased rightfully belong to the Republic.

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[67] PD No. 276, Section 1 (b).

[68] PD No. 532, Section 3-B (a) and (b).

[69] PD No. 1461, Article III, Section 9; the investments shall be made by a commercial bank acquired by PCA pursuant to PD 755, referring to UCPB.

[70] G.R. No. 96073, February 16, 1993.

D.2. The nature of the UCPB loans

The same reasoning applies *mutatis mutandis* with respect to the UCPB which exercised a dual role in the use of coconut levy funds.

D.2.a. UCPB as administrator of coconut levy funds

In answer to the coconut farmers' perennial credit problems, the government deemed the acquisition of a commercial bank to be imperative. On May 17, 1975, the PCA — one of the government agencies involved in the collection, management, investment, and use of the coconut levy fund[71] — bought the shares of First United Bank (*FUB*) belonging to Pedro Cojuangco. The sale of the bank's shares to PCA was made indirectly, through respondent Eduardo Cojuangco, since he had the exclusive option to acquire Pedro Cojuangco's controlling interest in FUB.[72] The funds used to purchase the FUB shares were from the CCSF.[73] Accordingly, certificates of stock representing 129,960 shares of FUB were issued on May 30, 1975[74] "in the name of [PCA] for the benefit of the coconut farmers of the Philippines." FUB subsequently changed its name to UCPB and amended its Articles of Incorporation in July 1975 to reflect the corporate changes.[75]

With the government's acquisition of UCPB through the PCA using coconut levy funds, all collections from the imposition of the coconut levies were required to be deposited, interest free,

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[71] *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. v. Presidential Commission on Good Government, et al.*, G.R. No. 75713, October 2, 1989, 178 SCRA 236, 244.

[72] Agreement, SB Records, Vol. 10, pp. 698- 702; see also *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25, 30.

[73] *Republic v. Cocofed, et al.*, G.R. Nos. 147062-64, December 14, 2001.

[74] *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25, 31.

[75] *Ibid.*

with UCPB.[76] The deposited coconut levy fund was primarily allotted to serve the credit requirements of the coconut farmers by providing them, upon proper authorization, with credit facilities at preferential rates.[77] Through decrees subsequently promulgated by President Marcos, UCPB was also given "full power and authority" to invest the surplus of the coconut levy fund, in acquiring *shares of corporations engaged in the coconut and palm oil industries*.[78] In this manner, UCPB became not only the depositary, but also the administrator, of the coconut levy fund. Thus, investments made by UCPB, directly or indirectly, as administrator of the coconut levy fund became impressed with public character; they were public investments even if made in the form of a loan to a private entity since they were sourced from a public fund and made pursuant to a declared national policy. In *Republic v. COCOFED*,[79] we ruled that if the money is allocated for a special purpose and raised by a special means, it is public in character. Government funds deposited in a bank remain as government funds; "even assuming that these become commingled with other funds of the bank, this does not remove the character of the fund as a credit representing government funds thus deposited."[80]

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[76] See PD No. 961, Article III, Section 8, and PD No. 1468, Article III, Section 8.

[77] PD No. 755, Sections 1 and 2.

[78] See PD No. 961, Article III, Section 9; and PD 1468, Article III, Section 9. See also Letters of Instructions No. 926 (September 3, 1979), which declared:

> Section 2. *Organization of the Cooperative Endeavor.* The (UCPB), in its capacity as the investment arm of the coconut farmers, thru the [CHF] x x x is hereby directed to invest, on behalf of the coconut farmers, such portion of the CHF x x x in a private corporation which shall serve as the instrument to pool and coordinate the resources of the coconut farmers and the oil millers in the buying, milling and marketing of copra x x x .

[79] G.R. No. 147062-64, December 14, 2001.

[80] *Philippine Rock Industries, Inc., v. Board of Liquidators*, G.R. No. 84992, December 15, 1989.

D.2.b. UCPB as a commercial bank

While functioning as depositary and administrator of the coconut levy fund, UCPB also continued to function as a commercial bank one of whose activities is the extension of loans to clients. Based on its genesis and the purposes it serves, UCPB is not simply a commercial bank; it is a bank owned and controlled by the government because of the ownership of its shares, the control that government exercises, and the purposes that it serves;[81] it is specifically a government arm in the banking industry to serve the specific needs of coconut farmers through the administration of the deposited coco levy funds and by serving as a specialized coconut farmers' bank.[82] As a government-owned or controlled corporation, UCPB's assets are government assets and its funds are subject to audit by the Commission on Audit.[83] Thus, the funds that it lends out are public funds; any

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[81] *Leyson, Jr. v. Office of the Ombudsman,* G.R. No. 134990, April 27, 2000, 331 SCRA 227 laid down the requisites necessary to consider an agency or entity a GOCC: a) the agency must be organized as a stock or non-stock corporation; b) it is vested with functions relating to public needs, whether governmental or proprietary in nature; and c) it is owned by the government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock.

[82] Section 1 of PD No. 755.

[83] Section 2 (1), Article IX of the 1987 Constitution reads:

> Section 2 (1). The Commission on Audit has the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the government, or any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations with original charters, and on a **post-audit basis: xxx(c) other government-owned and controlled corporations** xxx. **However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies**. (Emphasis ours.)

See also *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010.

private ownership in its corporate structure is confined to the minority privately-held shares, which do not detract from the character of the bank as a government-owned and controlled corporation.

E. Were the Loans and Advances Illegally Obtained?

The corporate relationship of Cojuangco with UCPB and with the CIIF Oil Mills, plus the loan or advance of funds that are public in character, do not by themselves characterize the property acquired using the borrowed funds as ill-gotten wealth that should be reconveyed to the Republic. Both the relationship between Cojuangco, on the one hand, and the bank and the oil mills, on the other, as well as their transactions with one another, viewed separately, are legally neutral. It is another matter, however, if they interact because of laws regulating such interactions. There, too, is the question of whether active irregularities attended these transactions, although no other illegality is claimed in this case.

A first question to ask is whether Cojuangco as a director and officer of UCPB or as director of the CIIF Oil Mills can obtain a loan from his principals to purchase the SMC shares.

E.1. A loan or advance to Cojuangco is not per se ultra vires.

Section 45 of the Corporation Code states:

> Section 45. *Ultra vires acts of corporations*.—No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.

It should be noted that what is *ultra vires* or beyond the power of the corporation must also be *ultra vires* or beyond the power of its board of directors to undertake. The powers of the board of directors, who under the law are authorized to exercise the powers of the corporation, are necessarily limited by restrictions imposed by law on the corporation, as these

restrictions are necessarily imposed also on the board of directors who act in behalf of the corporation.[84]

As earlier stated, the purpose of UCPB was to provide readily available credit for coconut farmers. PD No. 755 confirms this purpose when it states:

WHEREAS, in compliance with its prescribed duty, the Philippine Coconut Authority has ascertained, in response to the appeal of coconut farmers conveyed in a resolution of the Board of Directors of the Philippine Coconut Producers Federation dated May 17, 1975 that ownership by the coconut farmers of a commercial bank is a permanent solution to their perennial credit problems.

x x x x x x x x x

Section 1. *Declaration of National Policy*. It is hereby declared that the policy of the State is **to provide readily available credit facilities to the coconut farmers at preferential rates**; that this policy can be expeditiously and efficiently realized by the implementation of the "Agreement of the Acquisition of a Commercial Bank for the benefit of the Coconut Farmers" executed by the Philippine Coconut Authority, the terms of which "Agreement" are hereby incorporated by reference; and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate.

Section 2. *Financial Assistance*. To enable the coconut farmers to comply with their contractual obligations under the aforesaid Agreement, the Philippine Coconut Authority is hereby directed to draw and utilize the collections under the Coconut Consumers' Stabilization Fund authorized to be levied by Presidential Decree No. 232, as amended, to pay for the financial commitments of the coconut farmers under the said agreement and, except for the budgetary requirements of the Philippine Coconut Authority as approved by the Governing Board, all collections under the Coconut Consumers' Stabilization Fund Levy and fifty percent (50%) of the collections under the Coconut Industry Development Fund shall be deposited, interest free, with the said bank of the coconut farmers and such

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[84] Cesar Villanueva, *Philippine Corporate Law*, 1998, pp. 263-264, citing Guevarra, *The Social Function of Private Corporations*, 34 Phil. L.J. 464, 465 (1959).

deposits shall not be withdrawn until the Board of Directors of the said Bank and the Governing Board of the Philippine Coconut Authority shall have jointly **ascertained that the bank has sufficient equity capital to be in a financial position to service in full the credit requirements of the coconut farmers**; xxx

Under these terms, if the Republic had been able to prove that the amount of the loans to Cojuangco were so substantial that they covered the funds reserved for the use of coconut farmers, then a case can be made that the grant of the loan was an *ultra vires* act. What the Republic claimed in its Memorandum of January 19, 2007 — that it should have been UCPB and CIIF Oil Mills and not the respondents who should have purchased the subject shares[85]— would also apply. However, if the amount that Cojuangco borrowed consisted of funds that the UCPB could use for other investments, then no sufficient basis exists under the *ultra vires* rule to claim that the loans granted to Cojuangco for the purchase of SMC shares had been contrary to UCPB's purpose under PD No. 755. Under this situation, UCPB's grant of the loan for the purchase of SMC shares, by itself, would not constitute an *ultra vires* act, unless the Republic specifies some other irregularity whose consequence is to make the act *ultra vires*.

E.2 Breach of Fiduciary Duties

The grant of loans to Cojuangco, who was a director and officer of UCPB at the time that the shares were purchased, raises propriety questions under Sections 31 and 34 of the Corporation Code which provide:

Sec. 31 *Liability of directors, trustees or officers*.—Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or **acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.**

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[85] *Rollo* (G.R. No. 180702), Volume V, p. 1765.

When **a director, trustee, or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation** in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and **must account for the profits** which otherwise would have accrued to the corporation.

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Section 34. *Disloyalty of a director*.—Where a director, by virtue of his office, **acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same**, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture. (Emphasis ours.)

As early as 1929, the Court recognized the rule that directors of a corporation are bound to care for its property and manage its affairs in good faith. If a violation of these duties results in the waste of corporate assets or injury to corporate property, the directors, like other trustees, are liable for the waste or injury. If they perform acts clearly beyond their power, whereby loss ensues to the corporation, or dispose of its property or pay away its money without authority, they will be required to pay for the loss out of their private assets.[86]

Notably, in *Palting v. San Jose Petroleum*,[87] the Court invalidated provisions in the company's by-laws that allowed directors and officers of the corporation to do anything with the affairs of the corporation, even to benefit themselves directly or other persons or entities in which they are interested; such provisions were considered as contrary to the traditional fiduciary relationship between the directors and the stockholders of the company.

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[86] *Steinberg v. Velasco*, 52 Phil. 953, 960 (1929).

[87] G.R. No. L-14441, December 17, 1966, 18 SCRA 924, 943.

The directors of a corporation hold positions of trust and as such, they owe a duty of loyalty to their corporation. In case their interests conflict with those of the corporation, they cannot sacrifice the latter for their own advantage and benefit. This trust relationship is not a matter of statutory or technical law; it springs from the fact that directors have the control and guidance of corporate affairs and property and, hence, of the property and interests of the stockholders.[88]

In *Bailey v. Jacobs*,[89] the Supreme Court of Pennsylvania held that directors and officers must act in utmost good faith and cannot deal with the funds and property of the corporation, nor utilize the influence and advantage of their offices, for any but the common interest. If they make a personal profit through the use of corporate assets, they must account for it to the stockholders. It is immaterial that their dealings may not have caused a loss or been harmful to the corporation; the test of liability is whether they have been unjustly enriched.

On the surface, the present case is similar to *Bailey* where a director had used so-called advances from the corporation to purchase stocks of another company. Cojuangco appears to have betrayed the interests of UCPB when he purchased for himself the SMC shares using UCPB funds, when the same funds could have been used by UCPB to purchase the said shares for itself as administrator of the coconut levy funds. Thus, the benefits of the sale of the SMC shares should accrue to the UCPB. This conclusion, however, can be a rash judgment because the present case lacks the evidentiary support that *Bailey* enjoyed; the supporting evidence is not at all certain — a consequence of the Republic's failure to proceed to full-blown trial.

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[88] *Prime White Cement Corp. v. Intermediate Appellate Court*, G.R. No. 68555, March 19, 1993, 220 SCRA 103, 110. See also *Gokongwei, Jr. v. Securities and Exchange Commission*, G.R. No. L-45911, April 11, 1979, 89 SCRA 336, 367-368.

[89] 189 A. 320 (1937).

In the first place, the Republic failed to present categorical proof that Cojuangco was the UCPB President and Director **in 1983**. If a contrary conclusion had been reached by the *ponencia* at all, the conclusion was solely based on Cojuangco's allegation in his answer that he served as a public officer **during the Marcos Administration — a period that covered 14 years counting the martial law years alone**. The *ponencia* concluded that it was no longer incumbent upon the Republic to prove that Cojuangco was an officer and member of the governing board of UCPB because he could have adduced contradictory evidence, but failed to do so.[90]

This position, in my view, is untenable. As the plaintiff who made the positive allegation that Cojuangco was a UCPB officer and director in 1983, the Republic has the obligation to prove this fact. What is baffling, however, about this disputed issue is the fact that the **certification of the UCPB corporate secretary** — ***already in the Republic's possession and annexed to one of its pleadings — was not formally presented as evidence.*** There is nothing in the rules of evidence that shifts the burden of proof on Cojuangco merely because he made a general statement that he served as a public officer during the Marcos Administration. More importantly, ***the Republic did not even state the amount of the UCPB loan which was used to purchase the SMC shares or how many of these shares were purchased with the proceeds of the UCPB loan.*** In contrast with this apparent discrepancy between the Republic's factual allegations and supporting evidence, the plaintiff in *Bailey* had been able to describe in detail the advances taken by the erring director — *i.e.*, when they were taken, the details of his purchase and sale of the relevant shares. Without clarificatory evidence on how much of the UCPB funds were used; and how many shares were acquired; whether Cojuangco was indeed an officer at the time; and how Board approval was made — this Court has no basis to award to the Republic all the shares claimed for reversion.

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[90] *Ponencia*, p. 59.

E.3. Violation of single-borrowers limit and DOSRI rules

At the time the alleged transactions took place in 1983, Sections 23 and 83 of the General Banking Act, as amended — *i.e.,* the rules on the single borrower's limit and liabilities of directors, officers, stockholders (*DOSRI*) — were already in place. These Sections respectively state:

Section 23. Except as the Monetary Board may otherwise prescribe, the total liabilities of any person, company, corporation or firm, to a commercial banking corporation for money borrowed, excluding (a) loans secured by obligations of the Central Bank or of the Philippine Government; (b) loans fully guaranteed by the government as to the payment of the principal and interest; (c) loans to the extent covered by holding out on, or assignment of, deposits; and (d) other loans or credits which the Monetary Board may, from time to time, specify as non-risk assets, shall at no time exceed fifteen percent (15%) of the unimpaired capital and surplus of such bank.

The total liabilities of any borrower may amount to a further fifteen (15%) of the unimpaired capital and surplus of such banking corporation provided the additional liabilities are adequately secured by shipping documents, warehouse receipts or other similar documents transferring or securing title covering readily marketable, non-perishable staples, which staples must be fully covered by insurance, and must have a market value equal to at least one hundred and twenty-five percent (125%) of such additional liabilities.

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Section 83. No director or officer of any banking institution shall, either directly or indirectly, for himself or as representative or agent of others, borrow any of the deposits of funds of such bank nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for moneys borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be

punished with imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.

The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers or stockholders. However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two percent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank: Provided, however, that loans and advances to officers in the form of fringe benefits granted in accordance with the rules and regulations as may be prescribed by Monetary Board shall not be subject to the preceding limitation.

Cojuangco claims exemption from these provisions on the strength of Letter of Instructions No. (*LOI*) 926.[91] I agree with the *ponencia*, however, that Cojuangco cannot seek refuge under this LOI, since the exemption covers only the borrowings of participating oil mills and private corporations organized to serve as instruments to pool and coordinate the resources of the coconut farmers and oil millers, not those of individuals such as Cojuangco or the respondent corporations who acted as nominal stockholders. LOI 926, too, required the loans to be used to finance *capital expenditures*, not investments in shares of stock.

Despite this view, however, I disagree that the Republic successfully established that these provisions were violated or that these laws can be the basis for the return of the SMC

[91] Section 4. *Financial Borrowings*—All financial borrowings of the private corporation authorized to be organized as well as any Participating Oil Mill to finance their respective capital expenditures including the purchase of spare parts and inventories shall be expeditiously and promptly approved, and such borrowings are hereby ordered exempt from restrictions/limitations: on simple borrowers limitations; and on loans to corporations with interlocking directors, officers, stockholders, related interests and subsidiaries and affiliates, it being understood that such lendings are in effect made to the coconut industry as a whole and not to any particular individual or entity.

shares. To reiterate, the Republic has neither stated nor proved the amount of the UCPB loans taken to purchase the SMC shares or the unimpaired capital or the surplus of UCPB; it utterly failed to support the details of whatever loans had been taken with sufficient evidence. Thus, the Court cannot declare that the 15% limitation under the single borrower's limit was breached. Similarly, there can be no violation of the DOSRI rules where the manner under which the loan was taken was not alleged; the Republic failed to prove whether or not the UCPB board of directors approved the loans in question.

F. Close Association with President Marcos

A close examination of the records fails to reveal any specific allegation, much less proof, that Cojuangco amassed ill-gotten SMC shares because he is a relative or was a close associate of the late President Ferdinand Marcos. While the media may be replete with stories of Cojuangco's close relationship with President Marcos and his family, these stories are not evidence unless testified to by a competent witness or are materials that can be subject of judicial notice. At the most, what appears in the offered evidence in this case are admissions by Cojuangco of the positions he assumed in government, specifically at the PCA and at the UCPB. The Republic's *Reply* dated October 2, 2003, too, contained attached documents indicating the positions he assumed at the UCPB and its allied companies and in the CIIF oil mills or its holding companies. These documents, however, were never marked as exhibits and offered as evidence. Even if they had been so marked and offered, however, these may not suffice to prove "close association" under the standards of the jurisprudence on this point — not every senior official of the Marcos government falls under the category of a "close associate";[92] proof of this type of association has to be adduced. Again, the Republic failed on this point.

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[92] See *Republic v. Migriño*, G.R. No. 89483, August 30, 1990, 189 SCRA 289, 298; *Cruz, Jr. v. Sandiganbayan,* G.R. No. 94595, February 26, 1991, 194 SCRA 474; *Republic v. Sandiganbayan,* G.R. No. 104768, 407 SCRA 10.

G. <u>Conclusions</u>

Based on the above considerations, I would agree with Justice Bersamin that the Republic had failed to preponderantly establish its claim. The Republic has taken a significant step in proving a claim for reversion of ill-gotten wealth against Cojuangco, but simply failed to make a complete case leading to that conclusion.

Despite this conclusion, I do not agree that the Court should simply dismiss the petition and affirm the Sandiganbayan's decision. This decision — while seemingly correct on the basis of the evidence presented and recognized — cannot and should not be allowed to bind the Republic in light of the massive violation of its right to due process through the fatal omissions that the Republic's counsels made in handling the case. **In the absence of any clear evidence pointing to a criminal act under the Anti-Graft and Corrupt Practices Act or Republic Act (*RA*) No. 3019, the counsels mishandling of the case should be held responsible for gross negligence. Thus, un urgent point to consider in the review of the records of this case and of the proceedings before the Sandiganbayan is whether the Republic's counsels substantially fulfilled their duty to handle the Republic's case competently and responsibly.** As heretofore discussed, at stake are not only the substantial SMC shares involved but the integrity of government processes and its political will in addressing claimed abuses under the martial law regime.

<u>III</u>. <u>THE REPUBLIC'S CASE AND ITS IMPROPER HANDLING</u>

The *ponencia* justifies its decision to award the subject shares to the petitioner under RA No. 1379[93] and EO No. 1, in relation with EO Nos. 2, 14 and 14-A.

While the Republic alleged its causes of action for violations of RA No. 1379 and EO No. 1 in its complaint, it failed to

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[93] An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee.

pursue these causes of action and present supporting evidence during the course of the proceedings before the Sandiganbayan. The Republic's ultimately ended up with the charge relating to Cojuangco's loans with UCPB. Even at that, it refused to go to trial; it submitted its case on the basis of an offer of evidence consisting of materials that need not even be offered because they are part of the records or are matters appropriate for judicial notice.

To reiterate *for emphasis* what have heretofore been pointed out, (1) a cause of action duly pleaded was simply abandoned and completely forgotten; (2) materials proposed to be presented as evidence in the pre-trial brief or which were already mentioned in the pleadings were never introduced as evidence; (3) public documents available in governments records do not appear to have been considered; (4) likewise the availability of compulsory processes to compel the attendance of witnesses or the production of records were hardly availed of; (5) clear signals and warnings from the Sandiganbayan and even from the respondents went unheeded or unnoticed; (6) counsels patently exhibited lack of preparation, causing delays at the instance of the Republic; (7) the evidence offered were not evidence at all but were to confined to pleadings already on record, and laws and Supreme Court decisions that can be cited without need of offering them as evidence; and finally, (8) counsels simply refused to go to trial despite an incomplete case. **These are acts or omissions in the handling of the case that cannot be labeled as criminal for lack of clear evidence of the intent to place the government at a disadvantage and of the active motivation that drove this intent, but they can, at the very least, be labeled as gross negligence in the handling of the case, resulting at the Sandiganbayan level, in the denial of a fair opportunity for the government to present a case with a fair chance of achieving the recovery it sought.**

A. <u>Abandonment of, or Negligence in Pursuing, Forfeiture Action under RA No. 1379</u>

Sections 2 and 6 of RA No. 1379 authorize the recovery by the government of unlawfully acquired properties of public officers or employees:

Section 2**.** *Filing of petition.* Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: *Provided*, That no such petition shall be filed within one year before any general election or within three months before any special election.

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Section 6. *Judgment* — **If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property in question, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become the property of the State.** *Provided*, That no judgment shall be rendered within six months before any general election or within three months before any special election. The Court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both. (Emphasis ours)

Under these provisions, resort to a RA No. 1379 forfeiture action is appropriate if a subject and an object exist under the terms of this law. Specifically, there must be:

(1) A **subject** or a public officer or employee, who is **any person holding any public office or employment** by virtue of an appointment, election or contract, *and* any person holding any office or employment, by appointment or contract, in any State owned or controlled corporation or enterprise;

(2) An **object** which refers to **the properties** acquired by the public officer during his incumbency **which are manifestly out of proportion to his salary** as officer and to his other lawful income and the income from legitimately acquired properties.

Procedurally, Section 2 of RA No. 1379, as amended, requires a prior inquiry similar to a preliminary investigation in criminal cases to be made by the Ombudsman before a forfeiture proceeding can be initiated before the Court by the Solicitor General.[94]

In the present case, no prior inquiry appeared to have been conducted. Thus, Cojuangco raised this defense in his *Answer*, together with the time bar in bringing the complaint because of its proximity to an election. **Thereafter, the Republic simply disregarded its RA No. 1379 cause of action and does not appear to have ever undertaken any corrective action to continue to address the lapses that Cojuangco noted in his *Answer*.**

Save for the noted lapses, however, a forfeiture action under RA No. 1379, was a very promising opportunity for government

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[94] In *Republic v. Sandiganbayan* (G.R. No. 90529 August 16, 1991), the Court clarified that the preliminary inquiry required in a RA 1379 forfeiture cases originally given to the city or provincial fiscals are now vested with the Office of the Ombudsman and the jurisdiction over the forfeiture case is vested in the Sandiganbayan. The Court said:

> A perusal of the law originally creating the Office of the Ombudsman then (to be known as the Tanodbayan), and the amendatory laws issued subsequent thereto will show that, at its inception, **the Office of the Ombudsman was already vested with the power to investigate and prosecute civil and criminal cases before the Sandiganbayan and even the regular courts.** xxx
>
> Presidential Decree No. 1630 was the existing law governing the then Tanodbayan when Republic Act No. 6770 was enacted providing for the functional and structural organization of the present Office of the Ombudsman. This later law retained in the Ombudsman the power of the former Tanodbayan to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. In addition, the Ombudsman is now vested with primary jurisdiction over cases cognizable by the Sandiganbayan. xxx

to achieve the reversion that it sought. All that is required for this kind of action is to show the concurrence of the following elements:

(1) *the offender is a public officer or employee*;

(2) *he acquired a considerable amount of money or property during his incumbency*; and

(3) *the amount is manifestly out of proportion to his salary as such public officer or employer and to his other lawful income and the income from legitimately acquired property.*

Notably in this regard, the Republic's *Pre-Trial Brief*[95] already mentioned the following documentary evidence:

> (1) the **COA reports** (which the Sandiganbayan, however, expressly rejected in its extended Pre-Trial Order);[96]
>
> (2) **Cojuangco's Statements of Assets and Liabilities** (*SAL*) for the years 1973, 1976, 1978, and **1982;**[97] and

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> Nonetheless, while we do not discount the authority of the Ombudsman, we believe and so hold that the exercise of his correlative powers to both investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth is restricted only to cases for the recovery of ill-gotten and/or unexplained wealth which were amassed after February 25, 1986. Prior to said date, the Ombudsman is without authority to initiate such forfeiture proceedings. **We, however, uphold his authority to investigate cases for the forfeiture or recovery of such ill-gotten and/or unexplained wealth amassed even before the aforementioned date, pursuant to his general investigatory power under Section 15(l) of Republic Act No. 6770.** (Emphasis ours)

See also *Garcia v. Sandiganbayan and Office of the Ombudsman*, G.R. No. 165835, June 22, 2005 and *Romualdez v. Sandiganbayan*, G.R. No. 161602, July 13, 2010.

[95] Sandiganbayan Records, Volume 6, pp. 29-60.

[96] *Rollo* (G.R. No. 180702) Volume I, p. 97; Sandiganbayan Records, Volume 6, pp. 223-237.

[97] Sandiganbayan Records, Volume 6, pp. 839-846.

(3) a **Summation Analysis of the Wealth and Income** of Cojuangco.[98]

These were good starting points for a RA No. 1379 action as many other documentary evidence proving the elements of a forfeiture action are public documents that were already with, or could then easily be accessed by, the Republic. Notably, the Republic had in its possession proof that Cojuangco was a public officer and an admission that he was the beneficial owner of the shares. It would also seem that the PCGG had access to the SAL that Cojuangco filed during his incumbency and could have accessed other relevant documents through compulsory process.

With these documentary evidence on hand or within reach, the Republic chose to actively pursue another cause of action — breach of fiduciary duties of a director, but likewise failed to present crucial evidence therefor, particularly the loan documents evidencing the loans that Cojuangco wrongfully obtained as director. Interestingly, even the above-listed documents were not among those offered as evidence through the Republic's *Manifestation of Purpose*. Notably missing, too, were Cojuangco's SAL for the **year 1983** (the year when he acquired the disputed SMC shares) and the testimony of those who prepared the COA reports (after the Sandiganbayan belittled the probative value of the COA reports in its denial of the motion for summary judgment), separately from the RA 1379 cause of action, these could have been useful evidence to establish the misuse of the coconut levy funds and establish the damage to the Republic through proof of Cojuangco's unjust enrichment.

B. Gross Negligence in Pursuing Recovery Action under EO No. 1

EO No. 1, in relation with EO Nos. 2, 14 and 14-A, is another law that authorizes the government to recover ill-gotten wealth. A recovery action under EO No. 1 requires

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[98] *Id.* at 847.

(1) a subject defendant, which refers to the former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and **close associates.**

(2) an object or the ill-gotten wealth, which refers to assets and properties (in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries) belonging to the defendants. This can include business enterprises and associations owned or controlled by the defendants, during the Marcos administration, directly or through nominees;

(3) the mode of acquisition, through which the ill-gotten wealth was acquired, directly or indirectly,

(a) through or as a result of the improper or illegal use of or conversion of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or

(b) by taking undue advantage of their office, authority, influence, connections or relationship.

(4) prejudice to the government, as the act/s of the defendant/s result in their unjust enrichment and causing grave damage to the Filipino people and the Republic of the Philippines.

RA No. 1379 and EO No. 1 differ in two respects: (1) in the subjects or the persons covered, and (2) in the object sought to be forfeited or recovered. While RA No. 1379 broadly covers *all public officers*, EO No. 1 is confined to President Marcos, his immediate family, relatives, subordinates and close associates. Unlike EO No. 1, RA No. 1379 is not concerned with the manner of acquisition of the unlawfully acquired property. Despite these differences, both laws provide basis for the recovery or forfeiture of properties that rightfully belong to the State.

A reading of the complaint shows that the Republic's action for recovery under EO No. 1 of the Cojuangco block of SMC shares was premised on Cojuangco's act of supposedly *taking undue advantage of official position or authority*, resulting in his unjust enrichment and grave damage and prejudice to the State. Thus, **it was crucial for the Republic to prove that, at the time the subject shares were acquired, Cojuangco occupied an official position.**

While Cojuangco admitted that he (a) served as PCA Director and as President and Director of the UCPB; (b) acquired the SMC shares in 1983 and (c) used proceeds of loans and advances from UCPB and the CIIF Oil Mills, the Republic's submitted evidence and Cojuangco's admissions did not sufficiently prove that the details that EO No. 1 required, specifically, the period of Cojuangco's service as a public officer; the details of the loans and advances secured; whether and how much of these loans and advances funded the purchase of SMC shares; the details of the purchases made, when, by whom, for how much; the unjust enrichment on the part of Cojuangco and the prejudice to the government, in the manner done in *Bailey*.[99]

All these omissions cannot but be evidentiary gaps resulting from the counsel's gross negligence that should preclude the Court from entering a judgment of forfeiture in favor of the government.

C. Judicial Warnings on the Completeness of the Petitioner's Case

At the scheduled pre-trial conference on May 24, 2000, the Sandiganbayan apparently forewarned the Republic that the court "has not been adequately enlightened as to the basis for [its] claims"[100] in its *Third Amended Complaint* in Civil Case No. 0033-F. Pertinently, the Sandiganbayan held:

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[99] *Supra* note 89.

[100] Sandiganbayan Records, Volume 7, pp. 228-229.

The Court has remonstrated with the plaintiff, insofar as its adequacy is concerned, xxx It appears to this Court at this time that the failure of the plaintiff to have available responses and specific data and documents at this stage xxx arises from the fact that at this very stage, **the plaintiff through its counsel does not know what these documents are, where these documents will be and is still anticipating a submission or a delivery thereof by COA at an undetermined time.** xxx

xxx the Court is given a very clear impression that **the plaintiff does not know what documents will be or whether they are even available to prove the causes of action** in the complaint.[101] [Emphasis ours]

As the developments in the case showed, the Republic's counsel did not heed these strong words from the Sandiganbayan and persisted in its irresponsible ways.

Before the date of trial was set, the Republic successively moved for judgment on the pleadings and/or partial summary judgment concerning (i) the CIIF block of shares on July 26, 2002,[102] and (ii) the Cojuangco block of shares on July 11, 2003.[103] While the Sandiganbayan granted the Republic's motion on May 7, 2004 with respect to the CIIF block of shares and ordered their reconveyance in favor of the government,[104] the Sandiganbayan denied the Republic's motion with respect to the Cojuangco block of shares on the ground that there were "genuine factual issues" that needed to be tried. The Sandiganbayan in fact cited all the matters it considered (quoted at page 13 hereof) disputed, referring specifically to the sources of funds, nature of the sources, the details of the positions Cojuangco occupied in government, and details about Cojuangco's abuse of position and close association with President Marcos. The Sandiganbayan even reminded the Republic about its view that —

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[101] *Id.* at 227-231.

[102] *Id.*, Volume 9, p. 205.

[103] *Id.*, Volume 10, p. 634.

[104] *Id.*, Volume 9, pp. 517-521.

We cannot agree with the plaintiff's contention that the defendants' statements in his Pre-Trial Brief regarding the presentation of a possible CIIF witness as well as UCPB records, can already be considered as admissions *of the defendant's exclusive use and misuse of coconut levy funds to acquire the subject SMC shares and defendant Cojuangco's alleged taking advantage of his positions to acquire the subject SMC shares.*[105]

When trial was finally conducted more than four months after the Sandiganbayan set the case for trial,[106] the Republic inexplicably chose not to present testimonial evidence, despite the numerous witnesses and documents it proposed to present in its *Pre-Trial Brief* and the clear warnings the Sandiganbayan had aired. Instead, the Republic filed a Manifestation of Purpose and asked for the marking of certain exhibits, which it asked the Sandiganbayan to take judicial notice of[107] and which the Sandiganbayan chose to regard as the Republic's offer of evidence. These exhibits consisted of **four pleadings**, which were already part of the records, **three laws** and **two Supreme Court decisions.** In effect, the Republic presented as evidence documents that did not even have to be formally offered because they would have been admissible under judicial admissions and judicial notice.

What the Republic offered as evidence appears noticeably irregular, when compared with the evidence already in its possession as reflected in its pre-trial brief, specifically: (**1**) the Secretary's Certificate of UCPB and CIIF Oil Mills stating that Cojuangco was an officer and director of these entities in 1983; (**2**) Affidavits, Blank Declarations of Trust, and Voting Trust Agreements executed by the directors of the respondent corporations disclosing, for all intents and purposes, that they merely held the subject shares for Cojuangco; (**3**) Cojuangco's Statement of Assets and Liabilities (*SAL*) for the years 1973, 1975, 1978 and 1982. The Summation Analysis of Wealth and Income, a report prepared by PCGG and a part of the annexes

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[105] *Id.*, Volume 13, pp. 502-516.

[106] *Id.*, Volume 16, pp. 384-387.

[107] *Id.*, Volume 17, p. 89.

of the Republic's *Pre-Trial Brief*, implies that the PCGG had records of Cojuangco's SAL from 1967 to 1985. Additionally, the COA's report on UCPB, dated 1986, referred to the financial statements of UCPB, which could have helped to determine whether or not the loans extended to Cojuangco violated the DOSRI or the single borrower's limit.

Another extreme irregularity was the Republic's **failure to produce and offer the loan documents** as evidence, given that the Republic's claim is dependent on the theory that the SMC shares were acquired with UCPB loans. These documents would have definitely established the dates the loans were granted, the amounts and terms of the loans, and even the approving authorities who participated in the grant of the loan. In 1986, the Republic had control of the UCPB and would have had access to these loan agreements. If the loan documents could no longer be found, other documents such as the financial statements and the reports to the Central Bank would have referred to the loan transactions which might have amounted to at least $49 million, if the Republic's Third Amended Complaint were to be believed. If the loan documents had been lost, a manifestation in the Sandiganbayan would have been proper, as well as a demand for the respondents to produce loan documents, given that they had admitted to the loan transactions. Instead, the records are jarringly silent about these loan documents. What is true for the UCPB loan documents applies as well to advances from the CIIF Oil Mills which could not have been simply drawn without supporting documentation.

Lastly, it must be pointed out that the Republic was not definite in identifying the number of shares that it sought to claim. The *Third Amended Complaint* refers to 16,276,545 shares; Cojuangco's *Pre-Trial Brief* refers to an Annex "B" showing that there were 20,693,980 shares; and the Republic's *Pre-Trial Brief* refers to 27,198,545 shares. The records are likewise devoid of any details relating to the acquisition of the SMC shares; the Republic failed to allege, much less prove, their acquisition cost or even their acquisition dates, and when the purported stock splits occurred or the stock dividends were

distributed. These failures happened despite the clear suggestions from respondent's counsel – Atty. Estelito Mendoza – that while loans were secured, the details of the grant of the loans were not admitted.[108] The Republic could have easily asked for the subpoena of the stock transfer books or other pertinent records of SMC, but chose not to do so.

To summarize, the records of the proceedings before the Sandiganbayan show that the Republic had not presented relevant evidence within its possession and crucial evidence that it could have obtained. It also neglected to pursue a cause of action that it could have proven or take corrective action to continue to pursue this cause of action. The stubborn refusal of the Republic despite the warnings of the Sandiganbayan during pre-trial and thereafter, cannot be considered as anything but gross negligence. The question of whether the government's counsel can so prejudice the government's claim for recovery of valuable assets through the gross negligence of its counsel must be addressed by this Court as a measure to secure a full determination and closure of this case.

IV. NEGLIGENCE AND DUE PROCESS CONSIDERATIONS

A. Gross Negligence of Counsel and its Effects

That negligence of counsel binds the client is a strong and settled rule in jurisprudence. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client.[109] The reason for this rule is to avoid the foreseeable tendency of every losing party to raise the negligence of his or her counsel to escape an adverse decision; experience shows that very few graciously accept a losing verdict and parties would go to great lengths

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[108] *Rollo* (G.R. No. 169203), p. 356.

[109] *Multi-Trans Agency Philippines, Inc. v. Oriental Assurance Corporation*, G.R. No. 180817, June 23, 2009.

and seize every opportunity to avoid a loss, although the attempt at evasion is to the detriment of justice and our justice system.[110]

It is equally settled, too, with the same strength and emphasis that once the rule on mistake or negligence of counsel deserts its proper office as an aid to justice, and on the contrary becomes a hindrance and its chief enemy, the rigors of the rule must be relaxed to admit of exceptions and thereby prevent a miscarriage of justice. In other words, the Court has the power to consider a particular case an exception to the operation of the negligence of counsel rule whenever the purposes of justice require it. What should guide judicial action as a norm is that a party should be given the fullest opportunity to establish the merits of his action or defense, rather than allow him to lose life, honor or property because of technicalities or acts or omissions that denied him of his day in court.

Thus, the rule that the negligence of counsel binds the client admits of exceptions. The recognized exceptions are: (1) where reckless or gross negligence of counsel deprives the client of due process of law, (2) when its application will result in outright deprivation of the client's liberty or property or (3) where the interests of justice so require. In such cases, courts must step in and accord relief to a party-litigant.[111]

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It is the thoughtless disregard of consequences without exerting any effort to avoid them.[112]

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[110] Paraphrase of the words of Justice Bellosillo in his Dissenting Opinion in *Legarda v. Court of Appeals,* G.R. No. 94457, October 6, 1997.

[111] *Callangan v. People of the Philippines*, G.R. No. 153414, June 27, 2006; *Multi-Trans Agency Philippines, Inc. v. Oriental Assurance Corporation*, G.R. No. 180817, June 23, 2009; *People's Homesite & Housing Corporation v. Tiongco*, 12 SCRA 471; *Escudero v. Dulay*, G.R. No. 60578, February 23, 1988; and *Apex Mining, Inc. v. Court of Appeals*, G.R. No. 133750, November 29, 1999.

[112] *Multi-Trans Agency Philippines, Inc. v. Oriental Assurance Corporation*, G.R. No. 180817, June 23, 2009.

In this case, the omissions of Republic's counsel in handling its case has heretofore been itemized and discussed and need not be mentioned again. Suffice it to say that its failure to present evidence it had in its possession and those that it could have easily availed of, considered alone, already amounted to an abandonment or total disregard of its case. They show conscious indifference to or utter disregard of the possible adverse repercussions to the client. Such chronic inaction was present in this case when the Republic's counsel exhibited it as early as the pre-trial, at its motion for summary judgment where no less than the Sandiganbayan commented on the state of the counsel's preparation, and in the all-important presentation of evidence stage when counsel, without much thought, marked as evidence materials that need not even be marked and offered as evidence, and thereafter refused to go to trial. These acts cannot but constitute gross negligence.[113]

In *Government Service Insurance System (GSIS) v. Bengson Commercial Buildings*,[114] the Court pointed out that a pattern of fraud is evident when GSIS's counsel opted not to present evidence to contradict the plaintiff's evidence. Additionally, its abandonment of a cause of action without any apparent reason signifies the counsel's unbecoming disregard for the outcome of the case.

The uniqueness of the negligence in this case lies in the patent ineptitude that counsel for the Republic committed, as it passively allowed the government to be stripped of its interests in valuable assets claimed to be ill gotten wealth. The glaring errors of the counsel for the Republic were not minor errors in the exercise of discretion; the voluminous records of this case are replete with instances when counsel's attention was called concerning gaps in its case and its evidence, both by the Sandiganbayan and by the respondents. The Sandiganbayan even noted the apparent ignorance of the Republic's counsel regarding the case

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[113] *Callangan v. People of the Philippines*, G.R. No. 153414, June 27, 2006.

[114] G.R. No. 141454, January 31, 2002.

that it handled — its inability, despite the lapse of a substantial length of time, to respond to the questions of the Sandiganbayan and to identify the documents that it would present. These warnings alone should serve as a gauge to the Court of how egregious the negligence had been.

The party aggrieved in this case, it must be remembered, is not an ordinary client; it is the Republic of the Philippines. Unlike other parties who may cry out and insist on changing an incompetent counsel in order to protect its claims, the Republic cannot as easily do so. It is bound by law to rely on the skill, honesty, and diligence of the agency assigned to represent it.

Under these circumstances, it becomes the duty of the Court to ensure that the Republic is not prejudiced by a grossly incompetent or negligent counsel and is not thereby cheated out of its proper claims. For this Court to gloss over this incompetence, negligence, apathy and unconcern, and not to act on what clearly appears to be an aberrant situation, would simply run counter to its duty to uphold justice. If the incompetence, ignorance or inexperience of counsel is so great and his errors are so serious that the client who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case.[115]

The fundamental purpose of procedural rules is to afford each litigant every opportunity to present evidence in their behalf in order that substantial justice is achieved. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth.[116] While we cannot but find in this case that the Republic presented insufficient evidence to support its claim, we also find in the records pieces of evidence indicating that there is much more

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[115] *Apex Mining, Inc. v. Court of Appeals*, G.R. No. 133750, November 29, 1999.

[116] *Sarraga v.Bangko Filipino Savings and Mortgage Bank*, 442 Phil 55 (2002).

to the Republic's claim than was presented by the Republic's counsel.

While the Republic as a litigant should be bound by the mistake or negligence of its counsel, this should not be our conclusion in this case where the negligence, from every perspective, is gross and has effectively deprived the Republic of its day in court.

As a last word on this point, our jurisprudence teaches us that the State is never estopped from questioning the acts of its officials, if they are erroneous,[117] and more so if they are irregular. Such acts involve plain bureaucratic venality which leaves large and easily identifiable traces of neglect of duty. In *Republic v. Aquino*,[118] we applied this principle to the failure of the government to oppose an application for land registration. In *Sharp International Marketing v. Court of Appeals*,[119] we held that the government is not bound by a highly irregular contract entered into by a former Secretary. We also declared, in *Heirs of Reyes v. Republic*,[120] that even if the Office of the Solicitor General failed to question a patently unconstitutional compromise agreement between the Director of Lands and Forest Development with private individuals, the government cannot be bound by it; we branded the acts of the government agent as a "blatant abandonment of their [duties]" and a display of their "gross incompetence."

B. <u>The Demands of Due Process</u>

Traditionally, the due process clause is invoked to prevent governmental encroachment against life, liberty, and property of individuals; to secure the individual from the arbitrary exercise

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[117] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 106611, July 21, 1994; *Heirs of Reyes v. Republic*, G.R. No. 150862, August 3, 2006 and *Sharp International Marketing v. Court of Appeals*, G.R. No. 93661, September 4, 1991.

[118] L-33983, January 27, 1983.

[119] *Supra* note 17.

[120] *Supra* note 17.

of the powers of the government; to protect property from confiscation by legislative enactments, from seizure, forfeiture, and destruction without holding a trial and conviction by the ordinary mode of judicial procedure; and *to secure to all persons equal and impartial justice and the benefit of the general law*.[121] The clause came into being as a limit to the government's inherent police power, not primarily to protect the interests of government whose power to protect itself is primary, overriding and inherent.

In this case, the government comes before this Court, not as a sovereign, but as an ordinary litigant. The government seeks to recover what it claims to be property that should belong to the Filipino people, particularly to the coconut farmers, and to redress what it claims to be abuses committed during an unusual period in the country's history — the martial law years. That the recovery and redress are important government interests is evident from the extraordinary steps that the government has already taken pursuant to its inherent sovereign powers to address the aftermath of the martial law years; pursuant to its police power, the government has allowed the seizure and sequestration of wealth *prima facie* found to be ill-gotten during the martial law years, so that these properties can be preserved for appropriate judicial process.

In this judicial process, the government yields its character as sovereign and operates under equal terms with the owners of sequestered properties; it submits itself to the same rights and opportunities that every other litigant enjoys in a court case. The most basic of these rights is the right to due process — the right to be heard and to be given the opportunity to present and defend one's cause.

As these discussions show, the Sandiganbayan denied the government's claim for recovery, not because the government did not have any right under the law to recover ill-gotten wealth. **The government lost because of the acts of its counsel that amounted to no less than giving the claim away through omission, inaction or precipitate and ill-considered action**

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[121] *City of Manila v. Laguio*, 455 SCRA 308 (2005).

that, at the very least, should be considered gross negligence of counsel in handling the government's case. Under these circumstances, the government — like, any other litigant — should be allowed to invoke the same due process right that individuals invoke to secure an equal and impartial justice under the law.

The requirements of due process are satisfied if the following conditions are present: (1) there is a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction is lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (3) the defendant is given an opportunity to be heard; and (4) judgment is rendered upon a lawful hearing.[122] Substantively, what underlies due process is the rule of reason; it is a rule against arbitrariness and injustice measured under the standards of reason.[123] Procedurally, the fundamental requirement of due process involves the opportunity to be heard at a meaningful time and in a meaningful manner.[124] Whether in the substantive or in the procedural signification, due process must comport with the deepest notions of what is fair and right and just.[125]

On a superficial consideration, the proceedings before the Sandiganbayan appear to have complied with all that due process demands in a judicial proceeding. The Sandiganbayan granted the government the opportunity to be heard and was not remiss in reminding the Republic's counsel of its view of the status of the government's case. That counsel chose to formally offer as evidence documents that were already on record or subject to judicial notice, and that it miserably failed to support its

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[122] *Banco Espanol-Filipino v. Palanca,* 37 Phil. 921 (1918).

[123] *Habana v. National Labor Relations Commission*, G.R. No. 129418, September 10, 1999.

[124] Rene B. Gorospe, *Constitutional Law*, Volume 1, 2006 edition, p. 80, citing *Matthews v. Eldridge*, 424 US 319, 333 (1975).

[125] Rene B. Gorospe, *Constitutional Law*, Volume 1, 2006 edition, p. 80, citing *Agabon v. National Labor Relations Commission*, 442 SCRA 573 (2004), pp. 611-12.

stated claims, do not appear to be a violation of the requirements of procedural due process. However, ***the right to due process in our legal system does not merely rely on technical and pedantic application of procedural formalities; it involves as well the consideration of the substance of the affected underlying rights whose denial under unreasonable circumstances is equivalent to the loss of day in court that is entitled to redress and correction to afford justice to all.***[126]

The denial, as it transpired in this case, is unique but is not any less a basic and inherent unfairness. The Court is now faced with a situation where the conclusions of the Sandiganbayan are valid, *based on the evidence formally offered,* but are contradicted by existing evidence that counsel chose not to offer and evidence that, by omission, it chose not to explore. Effectively, it is a situation of abandonment by the Republic's counsel of causes of action that it could have successfully proven, and the loss by government of a real opportunity to be heard, especially after its counsel opted not to pursue its remedies under RA No. 1379 and after it obstinately refused to present the most basic documents to prove its claim under EO No. 1 despite the dire warnings of the Sandiganbayan. The Court stands to participate in this unfairness and injustice if it stands idly and let the government be deprived of valuable assets, or the chance to prove its interest in these assets, knowing fully well the gross incompetence and negligence of its counsel that brought on the injustice.

If the Court is convinced that gross injustice transpired brought on by the failure on the part of the Republic to present its case due to the gross negligence of its counsel, an outright dismissal of the present petition would not comply with the due process requirements enshrined in our Constitution. Let it be noted that the Republic's case is not totally without merit. Records are replete with indications that a meritorious case can be made out for the recovery sought if only the Republic can have its day in court. ***Under these circumstances, the Court's remedy***

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[126] *Philippine National Construction Corporation v. National Labor Relations Commission*, 292 SCRA 266 (1998).

can be no less than a continuation of the proceedings of this case through its remand of the case for a full-blown trial on the merits in proceedings that accord the government a real chance to present all of its evidence.

To be sure, the Court is not wanting in authority to impose this remedy; it is a well-established and accepted doctrine that rules of procedure may be modified at any time to become effective at once, so long as the change does not affect vested rights.[127] In short, this Court can adapt the rules of procedure, as its response to the duty and obligation to act in the higher interests of justice.

In its Third Amended Complaint, the Republic included in its prayer "such further relief as may appear to the Honorable Court to be just and equitable under the premises."[128] This Court has always been disposed to grant equitable relief to parties aggrieved by perfidy, fraud, reckless inattention and the downright incompetence of lawyers whose consequence is the deprivation of their clients' day in court.[129] Following this lead, a remand of the case to the Sandiganbayan for further hearing on the evidence of both parties is only proper. The remand would permit the Republic to properly present its case in accordance with the dictates of due process, and the courts to decide this important case based on real evidence and not merely by the omissions on the part of the Republic's counsel.

To reiterate what is at stake is not only public property of significant value may be involved, this case also marks a crucial step in our people's quest for integrity and accountability in our public officers. The sheer importance of this case to our nation requires that the case be remanded to the Sandiganbayan for hearing so that the petitioner, the Republic of the Philippines, may be afforded its proper day in court through competent counsels whose integrity are beyond question.

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[127] *Zulueta v. Asia Brewery, Inc.,* G.R. No. 138137, March 8, 2001.

[128] *Rollo* (G.R. No 180702) Volume II, p. 162.

[129] *Apex Mining, Inc. v. Court of Appeals*, G.R. No. 133750, November 29, 1999.

EN BANC

[G.R. No. 175831. April 12, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FLORANTE RELANES** *alias* **"DANTE,"** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT GENERALLY BINDING ON THE APPELLATE COURTS.—** At the core of almost all rape cases, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the participants therein can testify to its occurrence. In this regard, a restatement of a consistent ruling is in order. The rule is that "the findings of fact of trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect." This is especially true if such findings have been affirmed by the appellate court, thereby making such findings generally binding upon this Court.

2. **CRIMINAL LAW; RAPE; PROVEN IN CASE AT BAR.—** We have thoroughly reviewed the records and found that indeed the prosecution has sufficiently and convincingly proved that appellant had carnal knowledge of "AAA" through force and intimidation sometime in August 2002 and on January 9, 2003. Records bear out the convincing manner in which "AAA" testified and did so with candor and consistency in recounting the material points of the criminal incidents. She vividly recounted the sexual ordeal that she suffered sometime in August 2002 at the hands of her father[.] x x x Based on the [victim's] narrations, bolstered by appellant's own admission that he raped "AAA" in August 2002, we find conclusive evidence that "AAA" was undoubtedly raped against her will with the use of force and intimidation, not once, but many times at the hands of her own father. Moreover, "AAA's" testimony is corroborated by the findings of the examining physician, Dr. Ronald Lim. The doctor found healed lacerations at 6, 11 and 2 o'clock positions on "AAA's" hymen which according to him could have been

caused by sexual intercourse. "When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape." "AAA" cried while recounting her awful experience at the hands of her own father so that the court had to order a brief recess for her to regain her composure. Such display of emotion is a clear indication regarding the truth of the rape charges.

3. **REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL AND ALIBI, CIRCUMSTANCES JUSTIFYING DISMISSAL OF.—** Appellant's defense of denial and alibi should be dismissed outright in light of his positive identification by the victim "AAA." It is an established jurisprudential rule that denial and alibi, being negative self-serving defenses, cannot prevail over the affirmative allegations of the victim and her categorical and positive identification of the accused as her assailant. "Denial and alibi must be proved by the accused with clear and convincing evidence otherwise they cannot prevail over the positive testimony of credible witnesses who testify on affirmative matters." The assertion of appellant that he was in Manila on January 9, 2003 does not inspire belief since it remained uncorroborated by clear and convincing evidence that he was really in Manila when the last rape was committed. But what sealed appellant's fate is his plea for forgiveness to his wife, daughter, his parents and members of his family. "Evidently, no one would ask for forgiveness unless he had committed some wrong and a plea for forgiveness may be considered as analogous to an attempt to compromise." Settled is the rule that in criminal cases, except those involving quasi-offenses or those allowed by law to be settled through mutual concessions, an offer of compromise by the accused may be received in evidence as an implied admission of guilt. Under the circumstances obtaining, appellant's plea for forgiveness should be received as an implied admission of guilt.

4. **CRIMINAL LAW; RAPE; PROPER PENALTY WHERE THE SPECIAL QUALIFYING CIRCUMSTANCES OF MINORITY OF THE VICTIM AND HER RELATIONSHIP TO THE ACCUSED WERE ESTABLISHED.—** [T]his Court entertains no doubt that the prosecution had established beyond reasonable doubt that appellant raped his daughter "AAA" under the circumstances mentioned in Article 266-A, paragraph 1(a)

of the Revised Penal Code which, pursuant to Article 266-B of the same Code, warrants the imposition of the death penalty. To justify the imposition of death penalty, however, it is required that the special qualifying circumstances of minority of the victim and her relationship to the appellant be properly alleged in the Information and duly proved during the trial. All these requirements were duly established in this case. In the two Informations, it was alleged that "AAA" was 13 years old and 14 years old when the incidents happened. "AAA's" minority was buttressed not only by her testimony during the trial but likewise by her Certificate of Live Birth showing that she was born on July 5, 1988. Appellant categorically admitted that he was legally married to "AAA's" mother and that "AAA" is his daughter. Thus, appellant was correctly sentenced to death in both cases by the courts below. However, since the imposition of the death penalty has been prohibited by Republic Act No. 9346, the death penalty imposed on appellant is reduced to *reclusion perpetua*, without eligibility for parole.

5. ID.; ID.; ID.; CIVIL INDEMNITY.— Regarding damages, we sustain the appellate court's award of civil indemnity to "AAA" in the amount of ₱75,000.00 for each case. "[I]f the crime of rape is qualified by circumstances which warrant the imposition of the death penalty by applicable amendatory laws, the complainant should be awarded ₱75,000.00 for each count of rape as civil indemnity." We also affirm the award of moral and exemplary damages. In rape cases, "[m]oral damages are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries for the experience she underwent." Exemplary damages, on the other hand, are given by way of public example and to protect the young from sexual abuse. However, the moral and exemplary damages in the amount of ₱50,000.00 and ₱25,000.00, respectively, should be increased to ₱75,000.00 and ₱30,000.00 consistent with relevant jurisprudence. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment, likewise pursuant to prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Oftentimes in criminal cases, the issue presented for resolution is mostly confined to a question of credibility, a weighing of the prosecution's evidence against that of the defense. "In rape cases, if the testimony of the victim passes the test of credibility, the accused may be convicted solely on that basis"[1] for "[r]ape is generally unwitnessed and oftentimes, the victim is left to testify for herself."[2] From our thorough review of the instant case, we find that the trial court, as well as the appellate court, committed no reversible error in extending superior credit to the prosecution's evidence particularly the victim's testimony.

This is an automatic review of the Decision[3] of the Court of Appeals (CA) dated March 17, 2006 in CA-G.R. CR No. 00675 affirming with modification the Joint Decision[4] dated October 29, 2004 of the Regional Trial Court (RTC), Fifth Judicial Region, Branch 51, Sorsogon City, in Criminal Case Nos. 2003-5882 and 2003-5883, finding herein appellant Florante Relanes guilty beyond reasonable doubt of the crime of rape, in both cases, committed against his own daughter "AAA"[5] and imposing on him the supreme penalty of death for each act of rape.

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[1] *People v. Agustin*, G.R. No. 175325, February 27, 2008, 547 SCRA 136, 143.

[2] *People v. Baligod*, G.R. No. 172115, August 6, 2008, 561 SCRA 305, 311.

[3] CA *rollo*, pp. 66-78; penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[4] Records, Vol. I, pp. 77-82.

[5] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective

Appellant was charged in two separate Informations both dated March 14, 2003 with the crime of rape committed against "AAA", his own daughter, during the first week of August 2002 and on January 9, 2003. The Informations upon which appellant stood indicted read as follows:

CRIMINAL CASE NO. 2003-5882

That sometime in the first week of August 2002 at Barangay "CCC", Municipality of "DDD", Province of "EEE," Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, armed with a bolo and by means of force, threat and intimidation, did, then and there, willfully, unlawfully and felonious[ly], have sexual intercourse with "AAA", his 13-year old daughter, thereby impregnating her, against her will, to her damage and prejudice.

CONTRARY TO LAW.[6]

CRIMINAL CASE NO. 2003-5883

That on or about the 9th day of January, 2003, at Barangay "CCC", Municipality of "DDD", Province of "EEE", Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, armed with a bolo and by means of force, threat and intimidation, did, then and there, willfully, unlawfully and felonious[ly], have sexual intercourse with "AAA", his 14-year old daughter, thereby impregnating her, against her will, to her damage and prejudice.

CONTRARY TO LAW.[7]

Upon arraignment, appellant, assisted by his counsel, pleaded not guilty to both charges. The two criminal actions were jointly tried. In the course of the trial, the prosecution presented private complainant "AAA", Dr. Ronald Lim, and "BBB", complainant's

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Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children, effective November 5, 2004.

[6] Records, Vol. I, p. 1.

[7] Records, Vol. II, p. 1.

mother. For its part, the defense presented the sole testimony of the appellant.

Evidence for the Prosecution

The pertinent facts are faithfully stated in the Decision of the appellate court, *viz*:

"AAA", the private complainant herein, testified that she was only eight (8) years old when her father, accused Florante started to rape her and continued sexually abusing her until January 9, 2003; that as a result of such abuse, she got pregnant and that despite knowledge of her pregnancy, the accused continued to have sexual intercourse with her. The witness further narrated that the sexual abuse began after her whole family, including her two sisters transferred from Manila to "CCC", "DDD", "EEE" and that the very first time she was sexually abused by her father was on the occasion when her mother was away vending vegetables. This sexual encounter was followed by countless instances, whenever her mother was not at home and vending vegetables, where she was sexually abused by her father at bolo-point and threats were made against her life and that of her family, as well, in order to prevent her from telling anyone about the incidents. As recounted by "AAA", such sexual abuse happened once a week, usually on a Thursday at around 7:00 o'clock in the evening when her mother was away spending the night with her aunt in "FFF", "EEE" which was nearer to the market. Such sexual abuses were done by her father at their house and usually in the room of her parents and also, sometimes in the room where she and her siblings sleep. In describing how her father sexually abused her, "AAA" stated that her father would mount x x x her and insert his penis into her vagina and do a push and pull movement and in three occasions, her father even turned her backwards against him.

x x x x x x x x x

Despite her pregnancy, her father continued to have sexual intercourse with her until January 9, 2003 when her father left for Manila on January 11, 2003. On January 24, 2003, while her father was still in Manila, "AAA" finally had the courage to tell her mother about her sexual ordeals in the hands of her father. They went to the authorities to have [her] father arrested and there she executed a sworn statement about the rape incidents and likewise submitted herself to medical examination.

In this connection, Dr. Ronald Lim, the physician who examined "AAA" and who is the Municipal Health Officer of "DDD", "EEE" testified that on January 27, 2003, he conducted a physical examination of "AAA's" reproductive organ and found healed lacerations on the victim's genitalia indicating that a man had sexual intercourse with her. From the said examination, he also discovered that the victim was pregnant.

In the meantime, "BBB", the mother of private complainant, testified that she and accused Florante are the parents of "AAA". She related that on October 22, 1987, she and accused Florante were married and that on July 5, 1988, "AAA" was born from their union. She recalled that on January 24, 2003, "AAA" informed her that she had a problem and then proceeded to tell her that she was pregnant. When she asked who the father was, "AAA" replied that it was her own father, "BBB's" own husband who made her pregnant. The two of them then went to the police station to report the incident and to have Florante arrested and at the same time, have "AAA" medically examined. The witness stated that the result of the medical examination confirmed that "AAA" was indeed pregnant.

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Evidence for the Appellant

During the trial, appellant initially denied that he raped "AAA" in August 2002. But during the presentation of the defense evidence, he admitted having sexual intercourse with "AAA" during that time. Appellant, however, stood pat in denying the accusation against him in Criminal Case No. 2003-5883, asserting in the main that he had already left for Manila prior to the alleged rape on January 9, 2003.

Ruling of the Regional Trial Court

The trial court found the testimony of "AAA" in relating her horrible misfortune at the hands of her own father to be consistent and steadfast. It discredited appellant's defense of alibi holding that it cannot prevail over the positive testimony of "AAA". The dispositive portion of its Joint Decision reads:

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[8] CA *rollo*, pp. 67-69.

WHEREFORE, finding the accused FLORANTE RELANES guilty of the crime of Rape beyond reasonable doubt in both Criminal Case Nos. 2003-5882 [and] 5883, the Court hereby sentences him to suffer the penalty of double death and to pay the victim [“AAA”] the civil indemnity in the amount of Php50,000.00, Php75,000.00 [as] moral damages and Php25,000.00 as exemplary damages in each case.

SO ORDERED.[9]

Ruling of the Court of Appeals

In a Decision dated March 17, 2006, the CA affirmed with modification the trial court’s Joint Decision convicting appellant. Like the trial court, the CA also found the testimony of “AAA” clear, positive and consistent with the circumstances surrounding the rape incidents disposing as follows:

WHEREFORE, premises considered, the Joint Decision dated October 29, 2004 of the Regional Trial Court, Branch 51 of Sorsogon City, in Criminal Case Nos. 2003-5882 and 2003-5883 finding accused-appellant Florante Relanes *alias* “Dante” GUILTY beyond reasonable doubt of the crime of qualified rape and imposing upon him the death penalty in both cases is AFFIRMED with MODIFICATION in that, accused-appellant is hereby ordered to pay “AAA” the following amounts, in each case: ₱75,000.00 as civil indemnity; ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

SO ORDERED.[10]

From the CA, the case was elevated to this Court for automatic review. In its Resolution[11] dated January 30, 2007, this Court required the parties to submit Supplemental Briefs within 30 days from notice thereof if they so desire.

In a Manifestation[12] filed on March 14, 2007, appellant manifested that he is no longer filing a Supplemental Brief but

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[9] Records, Vol. I, p. 82; penned by Judge Jose L. Madrid.

[10] CA *rollo*, p. 77.

[11] *Rollo*, p. 15.

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

adopts his arguments in the Appellant's Brief[13] submitted before the CA. Appellee, for its part, manifested[14] that it is dispensing with the filing of a Supplemental Brief as the facts, issues and pertinent arguments have already been discussed in its Appellee's Brief[15] dated September 20, 2005. Hence, this case was submitted for deliberation on the basis of Appellant's Brief and Appellee's Brief filed with the CA.

Issues

In the Brief he filed with the CA, appellant raised the following assignment of errors:

> I. The trial court gravely erred in giving full weight and credence to the incredible testimony of the private complainant.
>
> II. The trial court gravely erred in convicting the accused-appellant of the crime charged despite the failure of [the] prosecution to prove his guilt beyond reasonable doubt.[16]

Our Ruling

We sustain the assailed Decision of the CA.

At the core of almost all rape cases, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the participants therein can testify to its occurrence. In this regard, a restatement of a consistent ruling is in order. The rule is that "the findings of fact of trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect."[17] This is especially true if such findings have

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[13] CA *rollo*, pp. 19-29.

[14] *Rollo*, unpaged.

[15] CA *rollo*, pp. 43-61.

[16] *Id.* at 21.

[17] *People v. Aguila*, G.R. No. 171017, December 6, 2006, 510 SCRA 642, 661.

been affirmed by the appellate court, thereby making such findings generally binding upon this Court.

We have thoroughly reviewed the records and found that indeed the prosecution has sufficiently and convincingly proved that appellant had carnal knowledge of "AAA" through force and intimidation sometime in August 2002 and on January 9, 2003. Records bear out the convincing manner in which "AAA" testified and did so with candor and consistency in recounting the material points of the criminal incidents. She vividly recounted the sexual ordeal that she suffered sometime in August 2002 at the hands of her father, thus:

x x x x x x x x x

Q. Why did you file a complaint against your father?
A. I want him to pay [for] what he did to me.

The victim is crying, Your Honor.

Q. Tell us, what did your father do to you?
A. He raped me.

Q. Where did that happen?
A. In our house.

Q. Where is that house?
A. In "CCC."

Q. When did it happen?
A. The last time was on January 9, ma'am

Q. What year?
A. 2003.

Q. You said that the last time your father raped you was on January 9, 2003, it means that there were other times, am I right?
A. Yes, ma'am.

Q. When was the first time that he raped you?
A. When I was in grade 2, ma'am.

Q. How old were you then?
A. I was 8 years old.

Q. And were you still living in "CCC" then?
A. Yes, ma'am.

Q. What about your mother, where was she when you were first raped by your father?
A. She was out of the house vending.

Q. What?
A. Selling vegetables.

Q. You were first raped when you were in grade 2, when else [was that] done to you?
A. It was in [the] month of August.

Court (to witness)
Q. August of what year?
A. 2002.

x x x x x x x x x

Court: (to witness)
Q. Whenever he raped you, what actually did your father do with your body?
A. He used to [carry] me and he always [had] a bolo with him.

Pros. Gabito
Q. And what does he tell you when he has that bolo?
A. He told me that whenever I report the matter to everybody, he will kill us all.

Q. After he tells you that, what did he do to you?
A. He raped me.

Court: (to witness)
Q. What do you mean by rape, what does he do to you?
A. He undressed me.

Q. And when you [were] already naked, what [did] he do?
A. He mounted x x x me.

Q. And when he is on top of you, what else did he do?
A. Whenever he went on top of me, he told me not to tell anybody or else I will be killed.

Q. Is he naked while he is on top of you?
A. Yes, ma'am.

Q. And [when] he goes on top of you, what does he do x x x to you in your private parts?
A. He raped me.

Q. When you said [rape], what does he use to rape you?
A. His penis.

Q. What does he do with his penis?
A. He inserted it to mine.

Q. When you said mine, are you referring to your vagina?
A. Yes, ma'am.

x x x x x x x x x

Q. And except from your description that he mounted x x x you, insert his penis [into] your vagina, did he do any other position or style to you?
A. He let me [turn] my back [to him].

The witness broke into tears again and cried and may we ask for a recess.

Court Recess for five minutes.

Atty. Gabito
Q. And when your back is already turned towards him[,] your back?
A. Yes, ma'am.

Q. And what does he do to you when your back is towards him and he is behind you?
A. He inserted his penis.

Court (to witness)
Q. When his penis is inside your vagina, what did he do?
A. [He's] doing a push and pull movement.[18]

As to the alleged rape committed on January 9, 2003, "AAA" stated:

Q. You said, the last time that your father had sexual intercourse was on January 9, that was two days before he left for Manila, am I right?
A. Yes, ma'am.

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[18] TSN, December 2, 2003, pp. 5-10.

Q. Now, where did that last rape incident happen?
A. In our house.

Q. Who were there when that happened?
A. Nobody, ma'am.

Q. Only you and your father?
A. Yes, ma'am.

Q. Before he [raped] you, what were you doing?
A. I was cleaning the house.

Q. And what about your father, what was he doing then?
A. Nothing, he was just there.

Q. Where were your two sisters and your mother then?
A. My other sister was in school while the other one was in my grandmother's house.

Q. What about your mother?
A. She was vending.

Q. While you were cleaning the house, what did your father do?
A. He let me go inside the bedroom.

Q. And did you follow him, his instruction to go to that bedroom?
A. It took me a long time before I went inside the room.

Q. Why?
A. I was afraid.

Q. But did you eventually enter the room?
A. Yes, ma'am.

Q. Why?
A. He threatened me.

Q. And while you were already inside the bedroom, what did he do?
A. He undressed me.

Q. What about himself, what did he do?
A. He also undressed himself.

Q. Were you totally naked?
A. Yes, ma'am.

Q. What about him?
A. He was also naked.

Q. So after both of you [were already] naked, what else happened?
A. He mounted x x x me.

Q. Where were you lying then?
A. [On] a bed.

Q. After he mounted x x x you, what else did he do to his penis?
A. He inserted his penis [into] my vagina.

Q. And while his penis was inserted [into] your vagina, what [was] he doing?
A. He was doing a push and pull movement.

Q. After he was [through] doing that, what else happened?
A. He ordered me to go on top of the divider of our house and he [told me to jump].

Q. Why?
A. Because he wanted to [terminate a pregnancy].[19]

Based on the foregoing narrations, bolstered by appellant's own admission that he raped "AAA" in August 2002, we find conclusive evidence that "AAA" was undoubtedly raped against her will with the use of force and intimidation, not once, but many times at the hands of her own father.

Moreover, "AAA's" testimony is corroborated by the findings of the examining physician, Dr. Ronald Lim.[20] The doctor found healed lacerations at 6, 11 and 2 o'clock positions on "AAA's" hymen which according to him could have been caused by sexual intercourse. "When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape."[21]

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[19] *Id.* at 15-17.

[20] Exhibit "A", Records, Vol. II, p. 8.

[21] *People v. Guambor*, 465 Phil. 671, 677 (2004), see *People v. Perez*, G.R. No. 182924, 575 SCRA 653, 672.

"AAA" cried while recounting her awful experience at the hands of her own father so that the court had to order a brief recess for her to regain her composure.[22] Such display of emotion is a clear indication regarding the truth of the rape charges.[23] As has been repeatedly held, "no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive [was] other than a fervent desire to seek justice."[24]

Appellant's belabored attempt to characterize the testimony of "AAA" as incredible lacks merit. His claim that it was not possible for him to rape "AAA" everytime her mother was in the market on Thursdays because she ("AAA") attended classes from Monday to Friday was completely debunked by the appellate court in this wise:

> Accused-appellant's position that the testimony of the rape victim is too incredible to be believed owing to the fact that the January 9, 2003 rape incident could not have been committed as the rape victim herself admitted that she was in school "from Mondays to Fridays" and stayed there from morning until afternoon is untenable. First, such admission does not in any way contradict the victim's testimony of rape as it does not exclude the possibility that accused-appellant had sexual intercourse with her on the date in question. Second, "AAA" herself clarified during her cross-examination that the sexual abuse by accused-appellant usually happened on a Thursday around 7:00 o'clock in the evening, after classes in school, and on the occasion when her mother was not at home.[25]

Appellant's defense of denial and alibi should be dismissed outright in light of his positive identification by the victim "AAA." It is an established jurisprudential rule that denial and alibi,

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[22] TSN, December 2, 2003, p. 9.

[23] *People v. Crespo*, G.R. No. 180500, September 11, 2008, 564 SCRA 613, 638.

[24] *People v. Isang*, G.R. No. 183087, December 4, 2008, 573 SCRA 150, 161.

[25] CA *rollo*, p. 74.

being negative self-serving defenses, cannot prevail over the affirmative allegations of the victim and her categorical and positive identification of the accused as her assailant.[26] "Denial and alibi must be proved by the accused with clear and convincing evidence otherwise they cannot prevail over the positive testimony of credible witnesses who testify on affirmative matters."[27] The assertion of appellant that he was in Manila on January 9, 2003 does not inspire belief since it remained uncorroborated by clear and convincing evidence that he was really in Manila when the last rape was committed. But what sealed appellant's fate is his plea for forgiveness to his wife, daughter, his parents and members of his family.[28] "Evidently, no one would ask for forgiveness unless he had committed some wrong and a plea for forgiveness may be considered as analogous to an attempt to compromise."[29] Settled is the rule that in criminal cases, except those involving quasi-offenses or those allowed by law to be settled through mutual concessions, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.[30] Under the circumstances obtaining, appellant's plea for forgiveness should be received as an implied admission of guilt.

With all the foregoing, this Court entertains no doubt that the prosecution had established beyond reasonable doubt that appellant raped his daughter "AAA" under the circumstances mentioned in Article 266-A, paragraph 1(a)[31] of the Revised

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[26] *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16, 42.

[27] *People v. Guevarra*, G.R. No. 182192, October 29, 2008, 570 SCRA 288, 306.

[28] TSN, July 26, 2004, p. 9.

[29] *People v. Abadies*, 433 Phil. 814, 824 (2002).

[30] RULES OF COURT, Rule 130, Section 27.

[31] Article 266-A. *Rape, When and How Committed.* — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

Penal Code which, pursuant to Article 266-B[32] of the same Code, warrants the imposition of the death penalty. To justify the imposition of death penalty, however, it is required that the special qualifying circumstances of minority of the victim and her relationship to the appellant be properly alleged in the Information and duly proved during the trial. All these requirements were duly established in this case. In the two Informations, it was alleged that "AAA" was 13 years old and 14 years old when the incidents happened. "AAA's" minority was buttressed not only by her testimony during the trial but likewise by her Certificate of Live Birth showing that she was born on July 5, 1988.[33] Appellant categorically admitted that he was legally married to "AAA's" mother and that "AAA" is his daughter.[34] Thus, appellant was correctly sentenced to death in both cases by the courts below. However, since the imposition of the death penalty has been prohibited by Republic Act No. 9346,[35] the death penalty imposed on appellant is reduced to *reclusion perpetua*, without eligibility for parole.[36]

Regarding damages, we sustain the appellate court's award of civil indemnity to "AAA" in the amount of ₱75,000.00 for

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(a) Through force, threat or intimidation;

x x x x x x x x x

[32] Article 266-B. *Penalties* — x x x

x x x x x x x x x

The death penalty shall be imposed if the crime of rape is committed with any of the following circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

x x x x x x x x x

[33] Exhibits "B"; "B-1", Records, Vol. I, p. 42.

[34] TSN, July 26, 2004, p. 2.

[35] An Act Prohibiting The Imposition of Death Penalty in the Philippines.

[36] *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 602.

each case. "[I]f the crime of rape is qualified by circumstances which warrant the imposition of the death penalty by applicable amendatory laws, the complainant should be awarded ₱75,000.00 for each count of rape as civil indemnity."[37] We also affirm the award of moral and exemplary damages. In rape cases, "[m]oral damages are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries for the experience she underwent."[38] Exemplary damages, on the other hand, are given by way of public example and to protect the young from sexual abuse. However, the moral and exemplary damages in the amount of ₱50,000.00 and ₱25,000.00, respectively, should be increased to ₱75,000.00 and ₱30,000.00 consistent with relevant jurisprudence.[39] In addition, interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment, likewise pursuant to prevailing jurisprudence.[40]

WHEREFORE, the Decision of the Court of Appeals dated March 17, 2006 finding appellant Florante Relanes guilty beyond reasonable doubt of two counts of qualified rape is *AFFIRMED with the MODIFICATIONS* that: (1) the penalty of death imposed on appellant is reduced to *reclusion perpetua* without eligibility for parole pursuant to Republic Act No. 9346; and (2) the award of moral and exemplary damages are increased to ₱75,000.00 and ₱30,000.00, respectively, in each case. The award of civil indemnity in the amount of ₱75,000.00 for each case is maintained. Interest at the rate of six percent (6%) per annum is imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.

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[37] *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903, 919.

[38] *People v. Jacob*, G.R. No. 177151, August 22, 2008, 563 SCRA 191, 208.

[39] *People v. Rocabo*, G.R. No. 193482, March 2, 2011.

[40] *People v. Galvez*, G.R. No. 181827, February 2, 2011, *People v. Alverio*, G.R. No. 194259, March 16, 2011.

SO ORDERED.

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

EN BANC

[G.R. No. 176951. April 12, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; and MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON,** *respondents.*

[G.R. No. 177499. April 12, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN;**

MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; and MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL, *respondents.*

[G.R. No. 178056. April 12, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; MUNICIPALITY OF EL SALVADOR, PROVINCE OF MISAMIS ORIENTAL; MUNICIPALITY OF NAGA, CEBU; and DEPARTMENT OF BUDGET AND MANAGEMENT,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF REPUBLIC ACT NOS. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491 (THE CITYHOOD LAWS); THE LOCAL GOVERNMENT UNITS COVERED BY THE CITYHOOD LAWS ARE EXEMPT FROM THE INCOME REQUIREMENT INTRODUCED BY R.A. NO. 9009.—** Congress clearly intended that the local government units covered by the Cityhood Laws be exempted from the coverage of R.A. No. 9009. The apprehensions of the then Senate President with respect to the considerable disparity between the income requirement of ₱20 million under the Local Government Code (LGC) prior to its amendment,

and the ₱100 million under the amendment introduced by R.A. No. 9009 were definitively articulated in his interpellation of Senator Pimentel during the deliberations on Senate Bill No. 2157. The then Senate President was cognizant of the fact that there were municipalities that then had pending conversion bills during the 11th Congress prior to the adoption of Senate Bill No. 2157 as R.A. No. 9009, including the municipalities covered by the Cityhood Laws. It is worthy of mention that the pertinent deliberations on Senate Bill No. 2157 occurred on October 5, 2000 while the 11th Congress was in session, and the conversion bills were then pending in the Senate. Thus, the responses of Senator Pimentel made it obvious that R.A. No. 9009 would not apply to the conversion bills then pending deliberation in the Senate during the 11th Congress. R.A. No. 9009 took effect on June 30, 2001, when the 12th Congress was incipient. By reason of the clear legislative intent to exempt the municipalities covered by the conversion bills pending during the 11th Congress, the House of Representatives adopted Joint Resolution No. 29, entitled *Joint Resolution to Exempt Certain Municipalities Embodied in Bills Filed in Congress before June 30, 2001 from the coverage of Republic Act No. 9009.* However, the Senate failed to act on Joint Resolution No. 29. Even so, the House of Representatives readopted Joint Resolution No. 29 as Joint Resolution No. 1 during the 12th Congress, and forwarded Joint Resolution No. 1 to the Senate for approval. Again, the Senate failed to approve Joint Resolution No. 1. x x x Thereafter, the conversion bills of the respondents were individually filed in the House of Representatives, and were all unanimously and favorably voted upon by the Members of the House of Representatives. The bills, when forwarded to the Senate, were likewise unanimously approved by the Senate. The acts of both Chambers of Congress show that the exemption clauses ultimately incorporated in the Cityhood Laws are but the express articulations of the clear legislative intent to exempt the respondents, *without exception*, from the coverage of R.A. No. 9009. Thereby, R.A. No. 9009, and, by necessity, the LGC, were amended, not by repeal but by way of the express exemptions being embodied in the exemption clauses.

2. ID.; ID.; ID.; THE IMPOSITION OF INCOME REQUIREMENT OF PHP 100 MILLION FROM LOCAL

SOURCES WAS ARBITRARY.— [T]he imposition of the income requirement of ₱100 million from local sources under R.A. No. 9009 was arbitrary. When the sponsor of the law chose the specific figure of ₱100 million, no research or empirical data buttressed the figure. Nor was there proof that the proposal took into account the after-effects that were likely to arise. As already mentioned, even the danger the passage of R.A. No. 9009 sought to prevent might soon become a reality. While the Constitution mandates that the creation of local government units must comply with the criteria laid down in the LGC, it cannot be justified to insist that the Constitution must have to yield to every amendment to the LGC despite such amendment imminently producing effects contrary to the original thrusts of the LGC to promote autonomy, decentralization, countryside development, and the concomitant national growth.

3. ID.; ID.; ID.; THE CITYHOOD LAWS DO NOT VIOLATE THE RIGHT OF THE LOCAL GOVERNMENT UNITS THEIR JUST SHARE IN THE NATIONAL TAXES.— [I]t suffices to state that the share of local government units is a matter of percentage under Section 285 of the LGC, not a specific amount. Specifically, the share of the cities is 23%, determined on the basis of population (50%), land area (25%), and equal sharing (25%). This share is also dependent on the number of existing cities, such that when the number of cities increases, then more will divide and share the allocation for cities. However, we have to note that the allocation by the National Government is not a constant, and can either increase or decrease. With every newly converted city becoming entitled to share the allocation for cities, the percentage of internal revenue allotment (IRA) entitlement of each city will decrease, although the actual amount received may be more than that received in the preceding year. That is a necessary consequence of Section 285 and Section 286 of the LGC. As elaborated here and in the assailed February 15, 2011 Resolution, the Cityhood Laws were not violative of the Constitution and the LGC. The respondents are thus also entitled to their just share in the IRA allocation for cities. They have demonstrated their viability as component cities of their respective provinces and are developing continuously, albeit slowly, because they had previously to share the IRA with about 1,500 municipalities. With their

conversion into component cities, they will have to share with only around 120 cities. Local government units do not subsist only on locally generated income, but also depend on the IRA to support their development. They can spur their own developments and thereby realize their great potential of encouraging trade and commerce in the far-flung regions of the country. Yet their potential will effectively be stunted if those already earning more will still receive a bigger share from the national coffers, and if commercial activity will be more or less concentrated only in and near Metro Manila.

ABAD, ***J.*****,** ***concurring opinion:***

POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; THE CHARGE OF "FLIP-FLOPPING" IS BASELESS AND UNFAIR; REASONS.— But the charge is unfair as it is baseless. The Court is not a living person whose decisions and actions are ruled by the whim of one mind. As a collegial body, the Court acts by consensus among its fifteen members. And total agreement is not always attainable. This is especially true where the political, social, or economic stakes involved are high or affect a great number of people and the views of the individual members are closely divided. The ideal is to have an early consensus among the Court's members in any given dispute. But, given the variety of their learning and experiences as former judges, trial lawyers, government counsels, academicians, and administrators, that is hardly an easy objective. Justices look at cases through different lenses. Disagreements in their conclusions can and often happen. Thus, they are forced to take a vote and the will of the majority prevails. It is when the votes among its members are closely divided as in this case that the decision of the Court could, on a motion for reconsideration, swing to the opposite side and, at times on a second motion for reconsideration, revert to the original side. The losers often malign this as flip-flopping by the Court. This of course is a lie in the sense that it tends to picture the Court as a silly, blundering, idiot which cannot make up its mind. The fact is that the shifts in the Court's decisions in this case were not at all orchestrated as the circumstances will show. They were the product of honest disagreements. x x x **One**. The Justices did not decide to change their minds on a mere

whim. The two sides filed motions for reconsideration in the case and the Justices had no options, considering their divided views, but perform their duties and vote on the same on the dates the matters came up for resolution. The Court is no orchestra with its members playing one tune under the baton of a maestro. They bring with them a diversity of views, which is what the Constitution prizes, for it is this diversity that filters out blind or dictated conformity. **Two**. Of **twenty-three** Justices who voted in the case at any of its various stages, **twenty** Justices stood by their original positions. They never reconsidered their views. Only three did so and not on the same occasion, showing no wholesale change of votes at any time. **Three**. To **flip-flop** means to vote for one proposition at first (**take a stand**), shift to the opposite proposition upon the second vote (**flip**), and revert to his first position upon the third (**flop**). Not one of the twenty-three Justices **flipped-flopped** in his vote. **Four**. The three Justices who changed their votes did not do so in one direction. Justice Velasco changed his vote from a vote to annul to a vote to uphold; Justice Villarama from a vote to uphold to a vote to annul; and Justice Mendoza from a vote to annul to a vote to uphold. Not one of the three flipped-flopped since they never changed their votes again afterwards. Notably, no one can dispute the right of a judge, acting on a motion for reconsideration, to change his mind regarding the case. The rules are cognizant of the fact that human judges could err and that it would merely be fair and right for them to correct their perceived errors upon a motion for reconsideration. The three Justices who changed their votes had the right to do so. **Five**. Evidently, the voting was not a case of massive flip-flopping by the Justices of the Court. Rather, it was a case of tiny shifts in the votes, occasioned by the consistently slender margin that one view held over the other. This reflected the nearly even soundness of the opposing advocacies of the contending sides. **Six**. It did not help that in one year alone in 2009, seven Justices retired and were replaced by an equal number. It is such that the resulting change in the combinations of minds produced multiple shifts in the outcomes of the voting. No law or rule requires succeeding Justices to adopt the views of their predecessors. Indeed, preordained conformity is anathema to a democratic system. The charge of flip-flopping by the Court or its members is unfair.

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

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE CITYHOOD LAWS; THE CITYHOOD LAWS SHALL CONFORM TO THE LOCAL GOVERNMENT CODE AND NOT THE OTHER WAY AROUND.—** In sustaining the constitutionality of the 16 Cityhood Laws, the majority ruled in the Resolution of 15 February 2011 that "in effect, the Cityhood Laws amended RA No. 9009 through the exemption clauses found therein. Since the Cityhood Laws explicitly exempted the concerned municipalities from the amendatory RA No. 9009, **such Cityhood Laws are, therefore, also amendments to the LGC itself.**" In the Resolution denying petitioner's motion for reconsideration, the majority stated that "RA 9009, and, by necessity, the LGC, were amended, x x x by way of the express exemptions embodied in the exemption clauses." This is egregious error. Nowhere in the plain language of the Cityhood Laws can this interpretation be discerned. Neither the title nor the body of the Cityhood Laws sustains such conclusion. Simply put, there is absolutely nothing in the Cityhood Laws to support the majority decision that the Cityhood Laws **further amended** the Local Government Code, which exclusively embodies the essential requirements for the creation of cities, including the conversion of a municipality into a city. An "amendment" refers to a change or modification to a previously adopted law. An amendatory law merely modifies a specific provision or provisions of a previously adopted law. **Indisputably, an amendatory law becomes an *integral part* of the law it seeks to amend**. x x x Each Cityhood Law states that if any of its provisions is "**inconsistent with the Local Government Code**," the other consistent provisions "**shall continue to be in full force and effect.**" **The clear and inescapable implication is that any provision in each Cityhood Law that is "inconsistent with the Local Government Code" has no force and effect — in short, void and ineffective.** Each Cityhood Law expressly and unequivocally acknowledges the superiority of the Local Government Code, and that **in case of conflict, the Local Government Code shall prevail over the Cityhood Law.** Clearly, the Cityhood Laws do not amend the Local Government Code, and the Legislature never intended the Cityhood Laws

to amend the Local Government Code. The clear intent and express language of the Cityhood Laws is for these laws to conform to the Local Government Code and not the other way around. To repeat, every Cityhood Law unmistakably provides that any provision in the Cityhood Law that is inconsistent with the Local Government Code is void. It follows that the Cityhood Laws cannot be construed to authorize the creation of cities that have not met the prevailing ₱100 million income requirement prescribed without exception in the Local Government Code.

2. **ID.; ID.; ID.; CITYHOOD LAWS ARE LAWS OTHER THAN THE LOCAL GOVERNMENT CODE.—** Congress, in providing in the Separability Clause that the Local Government Code shall prevail over the Cityhood Laws, treats the Cityhood Laws as separate and distinct from the Local Government Code. In other words, **the Cityhood Laws *do not form integral parts* of the Local Government Code but are separate and distinct laws**. There is therefore no question that the Cityhood Laws are laws ***other*** than the Local Government Code. As such, the Cityhood Laws cannot stipulate an exception from the requirements for the creation of cities, prescribed in the Local Government Code, without running afoul of the explicit mandate of Section 10, Article X of the 1987 Constitution. x x x The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code itself** and not in any other law. There is only one Local Government Code. To avoid discrimination and ensure uniformity and equality, the Constitution expressly requires Congress to stipulate in the Local Government Code itself all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws.

3. **ID.; ID.; ID.; THE PHP 100 MILLION INCOME REQUIREMENT UNDER R.A. NO. 9009 IS NEITHER ARBITRARY NOR DIFFICULT TO COMPLY.—** In stating that there is no evidence to support the increased income requirement, the majority is requiring the Legislature, the sole law-making body under the Constitution, to provide evidence justifying the economic rationale, like inflation rates, for the increase in income requirement. The Legislature in enacting

RA No. 9009, is not required by the Constitution to show the courts data like inflation figures to support the increased income requirement. Besides, even assuming the inflation rate is zero, this Court cannot invalidate the increase in income requirement on such ground. **A zero inflation rate does not bar the Legislature from increasing the income requirement to convert a municipality into a city, or increasing taxes or tax rates, or increasing capital requirements for businesses.** This Court should not venture into areas of analyses obviously beyond its competence. As long as the increased income requirement is not impossible to comply, such increase is a policy determination involving the wisdom of the law, which exclusively lies within the province of the Legislature. When the Legislature enacts laws increasing taxes, tax rates, or capital requirements for businesses, the Court cannot refuse to apply such laws on the ground that there is no economic justification for such increases. Economic, political or social justifications for the enactment of laws go into the wisdom of the law, outside the purview of judicial review. This Court cannot refuse to apply the law unless the law violates a specific provision of the Constitution. There is plainly nothing unconstitutional in increasing the income requirement from ₱20 million to ₱100 million because such increase does not violate any express or implied provision of the Constitution. The majority declares that the ₱100 million income requirement under RA No. 9009 was imposed **"simply to make it extremely difficult for the municipalities to become component cities."** In short, the majority is saying that the Legislature, out of sheer whim or spite at municipalities, increased the income requirement from ₱20 million to ₱100 million. Thus, the majority applied the ₱20 million income requirement under the repealed law, not the ₱100 million income requirement under the prevailing law. Yet, the majority does not state that the ₱100 million income requirement is unconstitutional. The majority simply refuses to apply the prevailing law, choosing instead to apply a repealed law. There is neither law nor logic in the majority decision. The majority's conclusion that the Legislature increased the income requirement from ₱20 million to ₱100 million "**simply to make it difficult for the municipalities to become component cities**" is not only unfair to the Legislature, it is also grossly erroneous. Contrary to the majority's baseless conclusion, the increased income requirement of ₱100 million is not at all difficult to comply.

4. **ID.; ID.; ID.; THE PHP 100 MILLION INCOME REQUIREMENT MUST BE STRICTLY COMPLIED WITH.—** [T]he majority do not find the increased income requirement of ₱100 million unconstitutional or unlawful. Unless the ₱100 million income requirement violates a provision of the Constitution or a law, such requirement for the creation of a city must be strictly complied with. Any local government unit applying for cityhood, whether located in or outside the metropolis and whether within the National Capital Region or not, must meet the ₱100 million income requirement prescribed by the prevailing Local Government Code. There is absolutely nothing unconstitutional or unlawful if the ₱100 million income requirement is easily complied with by local government units within or near the National Capital Region. The majority's groundless and unfair discrimination against these metropolis-located local government units must necessarily fail.

5. **ID.; ID.; ID.; ADVERSE EFFECT OF THE REDUCTION OF THE CITIES' INTERNAL REVENUE ALLOTMENT.—** In the Resolution of 15 February 2011, the majority declared that petitioner's protest against the reduction of their just share in the Internal Revenue Allotment "**all boils down to money**," criticizing petitioners for overlooking the alleged need of respondent municipalities to become channels of economic growth in the countryside. The majority gravely loses sight of the fact that "the members of petitioner League of Cities are also in need of the same resources, and are responsible for development imperatives that need to be done for almost 40 million Filipinos, as compared to only 1.3 million Filipinos in the respondent municipalities." As pointed out by petitioner, "this is just about equal to the population of Davao City, whose residents, on a per capita basis, receive less than half of what respondent municipalities' residents would receive if they become cities. **Stated otherwise, for every peso that each Davaoeño receives, his counterpart in the respondent municipality will receive more than two pesos.**" In addition, the majority conveniently forgets that members of the LCP have more projects, more contractual obligations, and more employees than respondent municipalities. If their share in the Internal Revenue Allotment is unreasonably reduced, it is possible, even expected, that these cities may have to lay-off

workers and abandon projects, greatly hampering, or worse paralyzing, the delivery of much needed public services in their respective territorial jurisdictions. Obviously, petitioner's protest does not boil down to money. **It boils down to equity and fairness, rational allocation of scarce resources, and above all, faithful compliance with an express mandatory provision of the Constitution.** No one should put a monetary value to compliance with an express command of the Constitution. Neither should any one, least of all this Court, disregard a patent violation of the Constitution just because the issue also involves monetary recovery. To do so would expose the stability of the Constitution to the corrosive vagaries of the marketplace.

6. ID.; ID.; ID.; NON-COMPLIANCE WITH PHP 100 MILLION INCOME REQUIREMENT IS AN OUTRIGHT VIOLATION OF THE CONSTITUTION.— RA No. 9009 amended the Local Government Code precisely because the criteria in the old Local Government Code were no longer sufficient. In short, RA No. 9009 repealed the old income requirement of ₱20 million, a requirement that no longer exists in our statute books. Compliance with the old income requirement is compliance with a repealed, dead, and non-existent law – a totally useless, futile, and empty act. Worse, compliance with the old requirement is an ***outright violation*** of the Constitution which expressly commands that "**no x x x city x x x shall be created x x x except in accordance with the criteria established in the local government code**." To repeat, applying what Justice Abad calls "the lower income requirement of the old code" is applying a repealed, dead, and non-existent law, which is exactly what the majority decision has done. The invocation here of "substantial compliance" of the Constitution reminds us of what Justice Calixto Zaldivar wrote in his dissenting opinion in *Javellana v. Executive Secretary:* "It would be indulging in sophistry to maintain that the voting in the citizens assemblies amounted to a substantial compliance with the requirements prescribed in Section 1 of Article XV of the 1935 Constitution." The same can be said in this case. A final point. There must be strict compliance with the express command of the Constitution that "**no city x x x shall be created x x x except in accordance with the criteria established in the local government code.**" Substantial compliance is insufficient because it will

discriminate against all other cities that were created **before and after the enactment** of the Cityhood Laws in strict compliance with the criteria in the Local Government Code, as amended by RA No. 9009. The conversion of municipalities into new cities means an increase in the Internal Revenue Allotment of the former municipalities and a **corresponding decrease** in the Internal Revenue Allotment of all other existing cities. There must be strict, not only substantial, compliance with the constitutional requirement because the economic lifeline of existing cities may be seriously affected. Thus, the invocation of "substantial compliance" with constitutional requirements is clearly misplaced in this case.

APPEARANCES OF COUNSEL

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Noel T. Tiampong for Municipalities of Catbalogan, Samar & Lamitan, Basilan.
Rodolfo R. Zabella, Jr. for Municipality of Tayabas.
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Immanuel M. Garde for Himamaylan City.
Vincent V. Dangazo for Ginoog City.
Cicero V. Malate, O.D. and *Kara Aimee M. Quevenco* for petitioner-intervenor, City of Silay.
Marlo C. Bancoro for City Government of Pagadian.
Francisco C. Geronilla for respondent Mayor of Mati, Davao Oriental.
Francisco V. Mijares, Jr. & Socorro D'Marie T. Inting for Municipality of Guihulngan.
Randy B. Bulwayan for Municipality of Tabuk.
Jose Augusto J. Salvacion for City of Tayabas.
Carlos H. Lozada for Bayugan.
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Manuel P. Casino, Gilbert A. Escoto & Ruel CA. Amboy for City of Borongon.
Alan M. Asio for intervenor Association of Cabadbaran City Employees.

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Lucieden G. Raz for petitioner-intervenor, City Government of Tagaytay.
Racmar R. Fernandez for intervenor City of Cauayan
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Norberto B. Patriarca for City Government of Zamboanga.
Reggie C. Placido for City of Cadiz.
Manuel M. Lepardo, Jr. for petitioner-intervenor Ludvina T. Mas, *et al.*
Ferdinand H. Ebarle for Association of Bayugan City Employees.

R E S O L U T I O N

BERSAMIN, *J.*:

We consider and resolve the *Ad Cautelam Motion for Reconsideration* filed by the petitioners *vis-à-vis* the Resolution promulgated on February 15, 2011.

To recall, the Resolution promulgated on February 15, 2011 granted the *Motion for Reconsideration* of the respondents presented against the Resolution dated August 24, 2010, reversed the Resolution dated August 24, 2010, and declared the 16 Cityhood Laws — Republic Acts Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491 — constitutional.

Now, the petitioners anchor their *Ad Cautelam Motion for Reconsideration* upon the primordial ground that the Court could no longer modify, alter, or amend its judgment declaring the Cityhood Laws unconstitutional due to such judgment having long become final and executory. They submit that the Cityhood Laws violated Section 6 and Section 10 of Article X of the Constitution, as well as the Equal Protection Clause.

The petitioners specifically ascribe to the Court the following errors in its promulgation of the assailed February 15, 2011 Resolution, to wit:

I. THE HONORABLE COURT HAS NO JURISDICTION TO PROMULGATE THE RESOLUTION OF 15 FEBRUARY 2011 BECAUSE THERE IS NO LONGER ANY ACTUAL CASE OR CONTROVERSY TO SETTLE.

II. THE RESOLUTION CONTRAVENES THE 1997 RULES OF CIVIL PROCEDURE AND RELEVANT SUPREME COURT ISSUANCES.

III. THE RESOLUTION UNDERMINES THE JUDICIAL SYSTEM IN ITS DISREGARD OF THE PRINCIPLES OF *RES JUDICATA* AND THE DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENTS.

IV. THE RESOLUTION ERRONEOUSLY RULED THAT THE SIXTEEN (16) CITYHOOD BILLS DO NOT VIOLATE ARTICLE X, SECTIONS 6 AND 10 OF THE 1987 CONSTITUTION.

V. THE SIXTEEN (16) CITYHOOD LAWS VIOLATE THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION AND THE RIGHT OF LOCAL GOVERNMENTS TO A JUST SHARE IN THE NATIONAL TAXES.

Ruling

Upon thorough consideration, we deny the *Ad Cautelam Motion for Reconsideration* for its lack of merit.

I.
Procedural Issues

With respect to the first, second, and third assignments of errors, *supra*, it appears that the petitioners assail the jurisdiction of the Court in promulgating the February 15, 2011 Resolution, claiming that the decision herein had long become final and executory. They state that the Court thereby violated rules of procedure, and the principles of *res judicata* and immutability of final judgments.

The petitioners posit that the controversy on the Cityhood Laws ended with the April 28, 2009 Resolution denying the respondents' second motion for reconsideration *vis-à-vis* the November 18, 2008 Decision for being a prohibited pleading,

and in view of the issuance of the *entry of judgment* on May 21, 2009.

The Court disagrees with the petitioners.

In the April 28, 2009 Resolution, the Court ruled:

By a vote of 6-6, the Motion for Reconsideration of the Resolution of 31 March 2009 is DENIED for lack of merit. The motion is denied since there is no majority that voted to overturn the Resolution of 31 March 2009.

The Second Motion for Reconsideration of the Decision of 18 November 2008 is DENIED for being a prohibited pleading, and the Motion for Leave to Admit Attached Petition in Intervention dated 20 April 2009 and the Petition in Intervention dated 20 April 2009 filed by counsel for Ludivina T. Mas, *et al*. are also DENIED in view of the denial of the second motion for reconsideration. No further pleadings shall be entertained. Let entry of judgment be made in due course.

Justice Presbitero J. Velasco, Jr. wrote a Dissenting Opinion, joined by Justices Consuelo Ynares-Santiago, Renato C. Corona, Minita Chico-Nazario, Teresita Leonardo-De Castro, and Lucas P. Bersamin. Chief Justice Reynato S. Puno and Justice Antonio Eduardo B. Nachura took no part. Justice Leonardo A. Quisumbing is on leave.[1]

Within 15 days from receipt of the April 28, 2009 Resolution, the respondents filed a *Motion To Amend Resolution Of April 28, 2009 By Declaring Instead That Respondents' "Motion for Reconsideration Of the Resolution Of March 31, 2009" And "Motion For Leave To File, And To Admit Attached 'Second Motion For Reconsideration Of The Decision Dated November 18, 2008' Remain Unresolved And To Conduct Further Proceedings Thereon*, arguing therein that a determination of the issue of constitutionality of the 16 Cityhood Laws upon a motion for reconsideration by an equally divided vote was not binding on the Court as a valid precedent, citing the separate opinion of then Chief Justice Reynato S. Puno in *Lambino v. Commission on Elections*.[2]

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[1] *Rollo* (G.R. No. 176951), Vol. 5, p. 4483.

[2] G.R. No. 174153, October 25, 2006, 505 SCRA 160, 290.

Thus, in its June 2, 2009 Resolution, the Court issued the following clarification of the April 28, 2009 Resolution, *viz*:

As a rule, a second motion for reconsideration is a prohibited pleading pursuant to Section 2, Rule 52 of the Rules of Civil Procedure which provides that: "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." Thus, a decision becomes final and executory after 15 days from receipt of the denial of the first motion for reconsideration.

However, when a motion for leave to file and admit a second motion for reconsideration is granted by the Court, the Court therefore allows the filing of the second motion for reconsideration. In such a case, the second motion for reconsideration is no longer a prohibited pleading.

In the present case, the Court voted on the second motion for reconsideration filed by respondent cities. In effect, the Court allowed the filing of the second motion for reconsideration. Thus, the second motion for reconsideration was no longer a prohibited pleading. However, for lack of the required number of votes to overturn the 18 November 2008 Decision and 31 March 2009 Resolution, the Court denied the second motion for reconsideration in its 28 April 2009 Resolution.[3]

As the result of the aforecited clarification, the Court resolved to expunge from the records several pleadings and documents, including respondents' *Motion To Amend Resolution Of April 28, 2009 etc*.

The respondents thus filed their *Motion for Reconsideration of the Resolution of June 2, 2009*, asseverating that their *Motion To Amend Resolution Of April 28, 2009 etc.* was *not* another motion for reconsideration of the November 18, 2008 Decision, because it assailed the April 28, 2009 Resolution with respect to the tie-vote on the respondents' *Second Motion For Reconsideration*. They pointed out that the *Motion To Amend*

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[3] *Rollo* (G.R. No. 176951), Vol. 5, pp. 4667-4668 (bold underscoring added for emphasis).

Resolution Of April 28, 2009 etc. was filed on May 14, 2009, which was within the 15-day period from their receipt of the April 28, 2009 Resolution; thus, the *entry of judgment* had been prematurely made. They reiterated their arguments with respect to a tie-vote upon an issue of constitutionality.

In the September 29, 2009 Resolution,[4] the Court required the petitioners to comment on the *Motion for Reconsideration of the Resolution of June 2, 2009* within 10 days from receipt.

As directed, the petitioners filed their *Comment Ad Cautelam With Motion to Expunge*.

The respondents filed their *Motion for Leave to File and to Admit Attached "Reply to Petitioners' 'Comment Ad Cautelam With Motion to Expunge*,'" together with the *Reply*.

On November 17, 2009, the Court resolved to note the petitioners' *Comment Ad Cautelam With Motion to Expunge*, to grant the respondents' *Motion for Leave to File and Admit Reply to Petitioners' Comment Ad Cautelam with Motion to Expunge*, and to note the respondents' *Reply to Petitioners' Comment Ad Cautelam with Motion to Expunge*.

On December 21, 2009, the Court, resolving the *Motion To Amend Resolution Of April 28, 2009 etc.* and voting anew on the *Second Motion For Reconsideration* in order to reach a concurrence of a majority, promulgated its Decision granting the motion and declaring the Cityhood Laws as constitutional,[5] disposing thus:

> WHEREFORE, respondent LGUs' Motion for Reconsideration dated June 2, 2009, their "Motion to Amend the Resolution of April 28, 2009 by Declaring Instead that Respondents' 'Motion for Reconsideration of the Resolution of March 31, 2009' and 'Motion for Leave to File and to Admit Attached Second Motion for Reconsideration of the Decision Dated November 18, 2008' Remain Unresolved and to Conduct Further Proceedings," dated May 14,

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[4] *Id.*, p. 4880.

[5] *Rollo* (G.R. No. 176951), Vol. 6, p. 5081.

2009, and their second Motion for Reconsideration of the Decision dated November 18, 2008 are GRANTED. The June 2, 2009, the March 31, 2009, and April 31, 2009 Resolutions are REVERSED and SET ASIDE. The entry of judgment made on May 21, 2009 must accordingly be RECALLED.

The instant consolidated petitions and petitions-in-intervention are DISMISSED. The cityhood laws, namely Republic Act Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491 are declared VALID and CONSTITUTIONAL.

SO ORDERED.

On January 5, 2010, the petitioners filed an *Ad Cautelam Motion for Reconsideration* against the December 21, 2009 Decision.[6] On the same date, the petitioners also filed a *Motion to Annul Decision of 21 December 2009*.[7]

On January 12, 2010, the Court directed the respondents to comment on the motions of the petitioners.[8]

On February 4, 2010, petitioner-intervenors City of Santiago, City of Legazpi, and City of Iriga filed their separate *Manifestations with Supplemental Ad Cautelam Motions for Reconsideration*.[9] Similar manifestations with supplemental motions for reconsideration were filed by other petitioner-intervenors, specifically: City of Cadiz on February 15, 2010;[10] City of Batangas on February 17, 2010;[11] and City of Oroquieta on February 24, 2010.[12] The Court required the adverse parties

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[6] *Id.*, pp. 5106-5238.

[7] *Id.*, pp. 5139-5160.

[8] *Id.*, p. 5161.

[9] *Id.*, pp. 5196-5200, 5202-5210, & 5212-5217, respectively.

[10] *Id.*, pp. 5346-5351.

[11] *Id.*, pp. 5365-5369.

[12] *Id.*, pp. 5420-5427.

to comment on the motions.[13] As directed, the respondents complied.

On August 24, 2010, the Court issued its Resolution reinstating the November 18, 2008 Decision.[14]

On September 14, 2010, the respondents timely filed a *Motion for Reconsideration of the "Resolution" Dated August 24, 2010*.[15] They followed this by filing on September 20, 2010 a *Motion to Set "Motion for Reconsideration of the 'Resolution' dated August 24, 2010" for Hearing*.[16] On November 19, 2010, the petitioners sent in their *Opposition [To the "Motion for Reconsideration of 'Resolution' dated August 24, 2010"]*.[17] On November 30, 2010,[18] the Court noted, among others, the petitioners' *Opposition*.

On January 18, 2011,[19] the Court denied the respondents' *Motion to Set "Motion for Reconsideration of the 'Resolution' dated August 24, 2010" for Hearing*.

Thereafter, on February 15, 2011, the Court issued the Resolution being now challenged.

It can be gleaned from the foregoing that, as the June 2, 2009 Resolution clarified, the respondents' *Second Motion For Reconsideration* was *not* a prohibited pleading in view of the Court's voting and acting on it having the effect of *allowing* the *Second Motion For Reconsideration*; and that when the

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[13] *Id.*, p. 5342 (February 9, 2010 Resolution Re: Manifestations & Motions of the Cities of Santiago, Legazpi, & Iriga); p. 5353 (February 16, 2010 Resolution Re: Manifestation & Motion of Cadiz City); p. 5397 (February 23, 2010 Resolution Re: Manifestation & Motion of Batangas City); and p. 5536 (March 2, 2010 Resolution Re: Manifestation & Motion of Oroquieta City).

[14] *Id.*, pp. 5846-5861.

[15] *Id.*, pp. 5879-5849.

[16] *Id.*, pp. 6369-6379.

[17] *Id.*, pp. 6388-6402.

[18] *Id.*, p. 5998.

[19] *Id.*, p. 6338.

respondents filed their *Motion for Reconsideration of the Resolution of June 2, 2009* questioning the expunging of their *Motion To Amend Resolution Of April 28, 2009 etc.* (which had been filed within the 15-day period from receipt of the April 28, 2009 Resolution), the Court opted to act on the *Motion for Reconsideration of the Resolution of June 2, 2009* by directing the adverse parties through its September 29, 2009 Resolution to comment. The same permitting effect occurred when the Court, by its November 17, 2009 Resolution, granted the respondents' *Motion for Leave to File and Admit Reply to Petitioners' Comment Ad Cautelam with Motion to Expunge*, and noted the attached *Reply*.

Moreover, by issuing the Resolutions dated September 29, 2009 and November 17, 2009, the Court: (*a*) rendered *ineffective* the tie-vote under the Resolution of April 28, 2009 and the ensuing denial of the *Motion for Reconsideration of the Resolution of March 31, 2009* for lack of a majority to overturn; (*b*), re-opened the Decision of November 18, 2008 for a second look under reconsideration; and (*c*) lifted the directive that no further pleadings would be entertained. The Court in fact entertained and acted on the respondents' *Motion for Reconsideration of the Resolution of June 2, 2009*. Thereafter, the Court proceeded to deliberate anew on the respondents' *Second Motion for Reconsideration* and ended up with the promulgation of the December 21, 2009 Decision (declaring the Cityhood Laws valid and constitutional).

It is also inaccurate for the petitioners to insist that the December 21, 2009 Decision overturned the November 18, 2008 Decision on the basis of the mere *Reflections* of the Members of the Court. To be sure, the *Reflections* were the legal opinions of the Members and formed part of the deliberations of the Court. The reference in the December 21, 2009 Decision to the *Reflections* pointed out that there was still a pending incident after the April 28, 2009 Resolution that had been timely filed within 15 days from its receipt,[20] pursuant to Section 10,

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[20] The incident was the *Motion To Amend Resolution Of April 28, 2009 By Declaring Instead That Respondents' "Motion for Reconsideration*

Rule 51,[21] in relation to Section 1, Rule 52,[22] of the *Rules of Court*. Again, the Court did act and deliberate upon this pending incident, leading to the issuance of the December 21, 2009 Decision (declaring the Cityhood Laws free from constitutional infirmity). It was thereafter that the Court rendered its August 24, 2010 Resolution (reinstating the November 18, 2008 Decision), to correct which the respondents' *Motion for Reconsideration of the "Resolution" Dated August 24, 2010* was filed. And, finally, the Court issued its February 15, 2011 Resolution, reversing and setting aside the August 24, 2010 Resolution.

It is worth repeating that the actions taken herein were made by the Court *en banc* strictly in accordance with the *Rules of Court* and its internal procedures. There has been no irregularity attending or tainting the proceedings.

It also relevant to state that the Court has frequently disencumbered itself under extraordinary circumstances from the shackles of technicality in order to render just and equitable relief.[23]

Of the Resolution Of March 31, 2009" And "Motion For Leave To File, And To Admit Attached 'Second Motion For Reconsideration Of The Decision Dated November 18, 2008' Remain Unresolved And To Conduct Further Proceedings Thereon.

[21] Section 10. *Entry of judgments and final resolutions.*—If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

[22] Section 1. *Period for filing.*—A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

[23] See *Manotok IV v. Heirs of Barque*, G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468; *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402; *Manalo v. Calderon,* G.R. No. 178920,

On whether the principle of immutability of judgments and bar by *res judicata* apply herein, suffice it to state that the succession of the events recounted herein indicates that the controversy about the 16 Cityhood Laws has not yet been resolved with finality. As such, the operation of the principle of immutability of judgments did not yet come into play. For the same reason is an adherence to the doctrine of *res judicata* not yet warranted, especially considering that the precedential ruling for this case needed to be revisited and set with certainty and finality.

II.

Substantive Issues

The petitioners reiterate their position that the Cityhood Laws violate Section 6 and Section 10 of Article X of the Constitution, the Equal Protection Clause, and the right of local governments to a just share in the national taxes.

The Court differs.

Congress clearly intended that the local government units covered by the Cityhood Laws be exempted from the coverage of R.A. No. 9009. The apprehensions of the then Senate President with respect to the considerable disparity between the income requirement of ₱20 million under the Local Government Code (LGC) prior to its amendment, and the ₱100 million under the amendment introduced by R.A. No. 9009 were definitively articulated in his interpellation of Senator Pimentel during the deliberations on Senate Bill No. 2157. The then Senate President was cognizant of the fact that there were municipalities that then had pending conversion bills during the 11th Congress prior to the adoption of Senate Bill No. 2157 as R.A. No. 9009,[24] including the municipalities covered by the Cityhood Laws. It is worthy of mention that the pertinent deliberations on Senate Bill No. 2157 occurred on October 5, 2000 while the 11th Congress

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October 15, 2007, 536 SCRA 290; *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160; and *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736.

[24] June 1998-June 2001.

was in session, and the conversion bills were then pending in the Senate. Thus, the responses of Senator Pimentel made it obvious that R.A. No. 9009 would not apply to the conversion bills then pending deliberation in the Senate during the 11th Congress.

R.A. No. 9009 took effect on June 30, 2001, when the 12th Congress was incipient. By reason of the clear legislative intent to exempt the municipalities covered by the conversion bills pending during the 11th Congress, the House of Representatives adopted Joint Resolution No. 29, entitled *Joint Resolution to Exempt Certain Municipalities Embodied in Bills Filed in Congress before June 30, 2001 from the coverage of Republic Act No. 9009*. However, the Senate failed to act on Joint Resolution No. 29. Even so, the House of Representatives readopted Joint Resolution No. 29 as Joint Resolution No. 1 during the 12th Congress,[25] and forwarded Joint Resolution No. 1 to the Senate for approval. Again, the Senate failed to approve Joint Resolution No. 1.

At this juncture, it is worthwhile to consider the manifestation of Senator Pimentel with respect to Joint Resolution No. 1, to wit:

MANIFESTATION OF SENATOR PIMENTEL

House Joint Resolution No. 1 seeks to exempt certain municipalities seeking conversion into cities from the requirement that they must have at least ₱100 million in income of locally generated revenue, exclusive of the internal revenue share that they received from the central government as required under Republic Act No. 9009.

The procedure followed by the House is questionable, to say the least. The House wants the Senate to do away with the income requirement of ₱100 million so that, en masse, the municipalities they want exempted could now file bills specifically converting them into cities. The reason they want the Senate to do it first is that Cong. Dodo Macias, chair of the House Committee on Local Governments, I am told, will not entertain any bill for the conversion

[25] June 2001-June 2004.

of municipalities into cities unless the issue of income requirement is first hurdled. The House leadership therefore wants to shift the burden of exempting certain municipalities from the income requirement to the Senate rather than do it itself.

That is most unusual because, in effect, the House wants the Senate to pass a blanket resolution that would qualify the municipalities concerned for conversion into cities on the matter of income alone. Then, at a later date, the House would pass specific bills converting the municipalities into cities. However, income is not only the requirement for municipalities to become cities. There are also the requirements on population and land area.

In effect, the House wants the Senate to tackle the qualification of the municipalities they want converted into cities piecemeal and separately, first is the income under the joint resolution, then the other requirements when the bills are file to convert specific municipalities into cities. To repeat, this is a most unusual manner of creating cities.

My respectful suggestion is for the Senate to request the House to do what they want to do regarding the applications of certain municipalities to become cities pursuant to the requirements of the Local Government Code. If the House wants to exempt certain municipalities from the requirements of the Local Government Code to become cities, by all means, let them do their thing. Specifically, they should act on specific bills to create cities and cite the reasons why the municipalities concerned are qualified to become cities. Only after the House shall have completed what they are expected to do under the law would it be proper for the Senate to act on specific bills creating cities.

In other words, the House should be requested to finish everything that needs to be done in the matter of converting municipalities into cities and not do it piecemeal as they are now trying to do under the joint resolution.

In my long years in the Senate, this is the first time that a resort to this subterfuge is being undertaken to favor the creation of certain cities. **I am not saying that they are not qualified. All I am saying is, if the House wants to pass and create cities out of certain municipalities, by all means let them do that. But they should do it following the requirements of the Local Government Code and, if they want to make certain exceptions, they can also do**

that too. But they should not use the Senate as a ploy to get things done which they themselves should do.

Incidentally, I have recommended this mode of action verbally to some leaders of the House. Had they followed the recommendation, for all I know, the municipalities they had envisioned to be covered by House Joint Resolution No. 1 would, by now — if not all, at least some — have been converted into cities. House Joint Resolution No. 1, the House, in effect, caused the delay in the approval in the applications for cityhood of the municipalities concerned.

Lastly, I do not have an amendment to House Joint Resolution No. 1. What I am suggesting is for the Senate to request the House to follow the procedure outlined in the Local Government Code which has been respected all through the years. By doing so, we uphold the rule of law and minimize the possibilities of power play in the approval of bills converting municipalities into cities.[26]

Thereafter, the conversion bills of the respondents were individually filed in the House of Representatives, and were all unanimously and favorably voted upon by the Members of the House of Representatives.[27] The bills, when forwarded to the Senate, were likewise unanimously approved by the Senate.[28] The acts of both Chambers of Congress show that the exemption clauses ultimately incorporated in the Cityhood Laws are but the express articulations of the clear legislative

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[26] Journal, Senate, 13th Congress, pp. 651-652 (November 7, 2006); see *rollo* (G.R. No. 176951), Vol. 5, pp. 3783-3784 (bold underscoring added for emphasis).

[27] Certification dated December 6, 2008, issued by the House of Representatives Plenary Affairs Bureau signed by Atty. Cesar S. Pareja, Executive Director of the House of Representatives Plenary Affairs Bureau and noted by Atty. Marilyn B. Barua-Yap, Secretary General of the House of Representatives; *rollo* (G.R. No. 176951), Vol. 5, pp. 3799-3801.

[28] "Legislative History" of House Bill No. (HBN) 5973 (Republic Act [R.A.] No. 9389); HBN-5997 (R.A. No. 9390); HBN-5998 (R.A. No. 9391); HBN-5999 (R.A. No. 9392); HBN-6001 (R.A. No. 9393); HBN-5990 (R.A. No. 9394); HBN-5930 (R.A. No. 9398); HBN-6005 (R.A. No. 9404); HBN-6023 (R.A. No. 9408); HBN-6024 (R.A. No. 9409); HBN-5992 (R.A. No. 9434); HBN-6003 (R.A. No. 9435); HBN-6002 (R.A. No. 9436); and HBN-6041 (R.A. No. 9491); Senate Legislative Information System, last accessed on March 25, 2011 at http://202.57.33.10/plis/Public/PB_leghist.asp.

intent to exempt the respondents, *without exception*, from the coverage of R.A. No. 9009. Thereby, R.A. No. 9009, and, by necessity, the LGC, were amended, not by repeal but by way of the express exemptions being embodied in the exemption clauses.

The petitioners further contend that the new income requirement of ₱100 million from locally generated sources is not arbitrary because it is not difficult to comply with; that there are several municipalities that have already complied with the requirement and have, in fact, been converted into cities, such as Sta. Rosa in Laguna (R.A. No 9264), Navotas (R.A. No. 9387) and San Juan (R.A. No. 9388) in Metro Manila, Dasmariñas in Cavite (R.A. No. 9723), and Biñan in Laguna (R.A. No. 9740); and that several other municipalities have supposedly reached the income of ₱100 million from locally generated sources, such as Bauan in Batangas, Mabalacat in Pampanga, and Bacoor in Cavite.

The contention of the petitioners does not persuade.

As indicated in the Resolution of February 15, 2011, fifty-nine (59) existing cities had failed as of 2006 to post an average annual income of ₱100 million based on the figures contained in the certification dated December 5, 2008 by the Bureau of Local Government. The large number of existing cities, virtually 50% of them, still unable to comply with the ₱100 million threshold income five years after R.A. No. 9009 took effect renders it fallacious and probably unwarranted for the petitioners to claim that the ₱100 million income requirement is not difficult to comply with.

In this regard, the deliberations on Senate Bill No. 2157 may prove enlightening, thus:

Senator Osmeña III. And could the gentleman help clarify why a municipality would want to be converted into a city?

Senator Pimentel. There is only one reason, Mr. President, and it is not hidden. It is the fact that once converted into a city, the municipality will have roughly more than three times the share that it would be receiving over the internal revenue allotment than it

would have if it were to remain a municipality. So more or less three times or more.

Senator Osmeña III. Is it the additional funding that they will be able to enjoy from a larger share from the internal revenue allocations?

Senator Pimentel. Yes, Mr. President.

Senator Osmeña III. Now, could the gentleman clarify, Mr. President, why in the original Republic Act No. 7160, known as the Local Government Code of 1991, such a wide gap was made between a municipality—what a municipality would earn—and a city? Because essentially, to a person's mind, even with this new requirement, if approved by Congress, if a municipality is earning ₱100 million and has a population of more than 150,000 inhabitants but has less than 100 square kilometers, it would not qualify as a city.

Senator Pimentel. Yes.

Senator Osmeña III. Now would that not be quite arbitrary on the part of the municipality?

Senator Pimentel. In fact, Mr. President, the House version restores the "or." So, this is a matter that we can very well take up as a policy issue. The chair of the committee does not say that we should, as we know, not listen to arguments for the restoration of the word "or" in the population or territorial requirement.

Senator Osmeña III. Mr. President, my point is that, I agree with the gentleman's "and," but perhaps we should bring down the area. There are certainly very crowded places in this country that are less than 10,000 hectares—100 square kilometers is 10,000 hectares. There might only be 9,000 hectares or 8,000 hectares. And it would be unfair if these municipalities already earning ₱100,000,000 in locally generated funds and have a population of over 150,000 would not be qualified because of the simple fact that the physical area does not cover 10,000 hectares.

Senator Pimentel. Mr. President, in fact, in Metro Manila there are any number of municipalities. San Juan is a specific example which, if we apply the present requirements, would not qualify: 100 square kilometers and a population of not less than 150,000.

But my reply to that, Mr. President, is that they do not have to become a city?

Senator Osmeña III. Because of the income.

Senator Pimentel. But they are already earning a lot, as the gentleman said. **Otherwise, the danger here, if we become lax in the requirements, is the metropolis-located local governments would have more priority in terms of funding because they would have more qualifications to become a city compared to far-flung areas in Mindanao or in the Cordilleras, or whatever.**

Therefore, I think we should not probably ease up on the requirements. Maybe we can restore the word "or" so that if they do not have the 100 square kilometers of territory, then if they qualify in terms of population and income, that would be all right, Mr. President.

Senator Osmeña III. Mr. President, I will not belabor the point at this time. I know that the distinguished gentleman is considering several amendments to the Local Government Code. Perhaps this is something that could be further refined at a later time, with his permission.

So I would like to thank the gentleman for his graciousness in answering our questions.

Senator Pimentel. I also thank the gentleman, Mr. President.[29]

The Court takes note of the fact that the municipalities cited by the petitioners as having generated the threshold income of ₱100 million from local sources, including those already converted into cities, are either in Metro Manila or in provinces close to Metro Manila. In comparison, the municipalities covered by the Cityhood Laws are spread out in the different provinces of the Philippines, including the Cordillera and Mindanao regions, and are considerably very distant from Metro Manila. This reality underscores the danger the enactment of R.A. No. 9009 sought to prevent, *i.e.*, that "the metropolis-located local governments would have more priority in terms of funding because they would have more qualifications to become a city compared to the far-flung areas in Mindanao or in the Cordilleras, or whatever," actually resulting from the abrupt increase in the income

[29] II Record, Senate, 13th Congress, p. 167 (October 5, 2000); *rollo* (G.R. No. 176951), Vol. 5, p. 3768.

requirement. Verily, this result is antithetical to what the Constitution and LGC have nobly envisioned in favor of countryside development and national growth. Besides, this result should be arrested early, to avoid the unwanted divisive effect on the entire country due to the local government units closer to the National Capital Region being afforded easier access to the bigger share in the national coffers than other local government units.

There should also be no question that the local government units covered by the Cityhood Laws belong to a class of their own. They have proven themselves viable and capable to become component cities of their respective provinces. They are and have been centers of trade and commerce, points of convergence of transportation, rich havens of agricultural, mineral, and other natural resources, and flourishing tourism spots. In his speech delivered on the floor of the Senate to sponsor House Joint Resolution No. 1, Senator Lim recognized such unique traits,[30] *viz:*

> It must be noted that except for Tandag and Lamitan, which are both second-class municipalities in terms of income, all the rest are categorized by the Department of Finance as first-class municipalities with gross income of at least ₱70 million as per Commission of Audit Report for 2005. Moreover, Tandag and Lamitan, together with Borongan, Catbalogan, and Tabuk, are all provincial capitals.
>
> The more recent income figures of the 12 municipalities, which would have increased further by this time, indicate their readiness to take on the responsibilities of cityhood.
>
> Moreover, the municipalities under consideration are leading localities in their respective provinces. Borongan, Catbalogan, Tandag, Batac and Tabuk are ranked number one in terms of income among all the municipalities in their respective provinces; Baybay and Bayugan are number two; Bogo and Lamitan are number three; Carcar, number four; and Tayabas, number seven. Not only are they pacesetters in their respective provinces, they are also among the frontrunners in

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[30] Journal, Senate, 13th Congress, p. 1240 (January 29, 2007); *rollo*, (G.R. No. 176951), Vol. 5, p. 3775.

their regions — Baybay, Bayugan and Tabuk are number two income-earners in Regions VIII, XIII, and CAR, respectively; Catbalogan and Batac are number three in Regions VIII and I, respectively; Bogo, number five in Region VII; Borongan and Carcar are both number six in Regions VIII and VII, respectively. This simply shows that these municipalities are viable.

Petitioner League of Cities argues that there exists no issue with respect to the cityhood of its member cities, considering that they became cities in full compliance with the criteria for conversion at the time of their creation.

The Court considers the argument too sweeping. What we pointed out was that the previous income requirement of ₱20 million was definitely not insufficient to provide the essential government facilities, services, and special functions *vis-à-vis* the population of a component city. We also stressed that the increased income requirement of ₱100 million was not the only conclusive indicator for any municipality to survive and remain viable as a component city. These observations were unerringly reflected in the respective incomes of the fifty-nine (59) members of the League of Cities that have still failed, remarkably enough, to be compliant with the new requirement of the ₱100 million threshold income five years after R.A. No. 9009 became law.

Undoubtedly, the imposition of the income requirement of ₱100 million from local sources under R.A. No. 9009 was arbitrary. When the sponsor of the law chose the specific figure of ₱100 million, no research or empirical data buttressed the figure. Nor was there proof that the proposal took into account the after-effects that were likely to arise. As already mentioned, even the danger the passage of R.A. No. 9009 sought to prevent might soon become a reality. While the Constitution mandates that the creation of local government units must comply with the criteria laid down in the LGC, it cannot be justified to insist that the Constitution must have to yield to every amendment to the LGC despite such amendment imminently producing effects contrary to the original thrusts of the LGC to promote autonomy, decentralization, countryside development, and the concomitant national growth.

Moreover, if we were now to adopt the stringent interpretation of the Constitution the petitioners are espousing, we may have to apply the same restrictive yardstick against the recently converted cities cited by the petitioners, and find two of them whose conversion laws have also to be struck down for being unconstitutional. The two laws are R.A. No. 9387[31] and R.A. No. 9388,[32] respectively converting the municipalities of San Juan and Navotas into highly urbanized cities. A cursory reading of the laws indicates that there is no indication of compliance with the requirements imposed by the LGC, for, although the two local government units concerned presumably complied with the income requirement of ₱50 million under Section 452 of the LGC and the income requirement of ₱100 million under the amended Section 450 of the LGC, they obviously did not meet the requirements set forth under Section 453 of the LGC, to wit:

> Section 453. *Duty to Declare Highly Urbanized Status*.—It shall be the duty of the President to declare a city as highly urbanized within thirty (30) days after it shall have met the minimum requirements prescribed in the immediately preceding Section, upon proper application therefor and ratification in a plebiscite by the qualified voters therein.

Indeed, R.A. No. 9387 and R.A. No. 9388 evidently show that the President had not classified San Juan and Navotas as highly urbanized cities upon proper application and ratification in a plebiscite by the qualified voters therein. A further perusal of R.A. No. 9387 reveals that San Juan did not qualify as a highly urbanized city because it had a population of only 125,558, contravening the required minimum population of 200,000 under Section 452 of the LGC. Such non-qualification as a component city was conceded even by Senator Pimentel during the deliberations on Senate Bill No. 2157.

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[31] An Act Converting the Municipality of San Juan into a Highly Urbanized City to be Known as the City of San Juan.

[32] An Act Converting the Municipality of Navotas into a Highly Urbanized City to be Known as the City of Navotas.

The petitioners' contention that the Cityhood Laws violated their right to a just share in the national taxes is not acceptable.

In this regard, it suffices to state that the share of local government units is a matter of percentage under Section 285 of the LGC, not a specific amount. Specifically, the share of the cities is 23%, determined on the basis of population (50%), land area (25%), and equal sharing (25%). This share is also dependent on the number of existing cities, such that when the number of cities increases, then more will divide and share the allocation for cities. However, we have to note that the allocation by the National Government is not a constant, and can either increase or decrease. With every newly converted city becoming entitled to share the allocation for cities, the percentage of internal revenue allotment (IRA) entitlement of each city will decrease, although the actual amount received may be more than that received in the preceding year. That is a necessary consequence of Section 285 and Section 286 of the LGC.

As elaborated here and in the assailed February 15, 2011 Resolution, the Cityhood Laws were not violative of the Constitution and the LGC. The respondents are thus also entitled to their just share in the IRA allocation for cities. They have demonstrated their viability as component cities of their respective provinces and are developing continuously, albeit slowly, because they had previously to share the IRA with about 1,500 municipalities. With their conversion into component cities, they will have to share with only around 120 cities.

Local government units do not subsist only on locally generated income, but also depend on the IRA to support their development. They can spur their own developments and thereby realize their great potential of encouraging trade and commerce in the far-flung regions of the country. Yet their potential will effectively be stunted if those already earning more will still receive a bigger share from the national coffers, and if commercial activity will be more or less concentrated only in and near Metro Manila.

III.
Conclusion

We should not ever lose sight of the fact that the 16 cities covered by the Cityhood Laws not only had conversion bills pending during the 11th Congress, but have also complied with the requirements of the LGC prescribed prior to its amendment by R.A. No. 9009. Congress undeniably gave these cities all the considerations that justice and fair play demanded. Hence, this Court should do no less by stamping its *imprimatur* to the clear and unmistakable legislative intent and by duly recognizing the certain collective wisdom of Congress.

WHEREFORE, the *Ad Cautelam* Motion for Reconsideration (of the Decision dated 15 February 2011) is denied with finality.

SO ORDERED.

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

Abad, J., see concurring opinion.

Carpio, J., see dissenting opinion.

Carpio Morales, J., maintains her vote, hence her dissent.

Brion, Peralta, and *Villarama, Jr., JJ.,* join the dissent of *J*. Carpio.

Sereno, J., joins the dissent of *J*. Carpio and reserves her right to file a distinct dissenting opinion.

Nachura and *del Castillo, JJ.,* no part.

CONCURRING OPINION

ABAD, *J*.:

I fully concur in the resolution that Justice Lucas Bersamin wrote for the majority. I would want, however, to reply briefly to the charge that the Court has been guilty of "flip-plopping" in this case. Since the Court is a collegial body, the implication

is that the majority of its members have collectively flip-flopped in their decisions.

But the charge is unfair as it is baseless. The Court is not a living person whose decisions and actions are ruled by the whim of one mind. As a collegial body, the Court acts by consensus among its fifteen members. And total agreement is not always attainable. This is especially true where the political, social, or economic stakes involved are high or affect a great number of people and the views of the individual members are closely divided.

The ideal is to have an early consensus among the Court's members in any given dispute. But, given the variety of their learning and experiences as former judges, trial lawyers, government counsels, academicians, and administrators, that is hardly an easy objective. Justices look at cases through different lenses. Disagreements in their conclusions can and often happen. Thus, they are forced to take a vote and the will of the majority prevails.

It is when the votes among its members are closely divided as in this case that the decision of the Court could, on a motion for reconsideration, swing to the opposite side and, at times on a second motion for reconsideration, revert to the original side. The losers often malign this as flip-flopping by the Court.

This of course is a lie in the sense that it tends to picture the Court as a silly, blundering, idiot which cannot make up its mind. The fact is that the shifts in the Court's decisions in this case were not at all orchestrated as the circumstances will show. They were the product of honest disagreements.

Congress passed a number of laws converting sixteen municipalities into cities. The League of Cities assailed these laws as unconstitutional on the ground that the sixteen municipalities involved did not meet the ₱100 million minimum income requirement of the Local Government Code. For their part, the municipalities countered that their laws constituted valid legislative amendments of such requirement.

The Court was divided in its original decision of November 18, 2008 in the case. A majority of six Justices voted to annul the laws, five members dissented, and four took no part (6-5-4), as follows:

Majority (annul)	Minority (uphold)	No Part
1. J. Quisumbing	1. J. Corona	1. C.J. Puno
2. J. Carpio	2. J. Azcuna	2. J. Tinga
3. J. Martinez	3. J. Nazario	3. J. Nachura
4. J. Morales	4. J. Reyes	4. J. Santiago (on leave)
5. J. Velasco	5. J. De Castro	
6. J. Brion		

Notably, the majority won by just 1 vote. Their lead firmed up, however, with an increase of 2 votes when the Court took up the motion for reconsideration of the sixteen municipalities on March 31, 2009, thus:

Majority (annul)	Minority (uphold)	No Part
1. J. Quisumbing	1. J. Santiago	1. C.J. Puno
2. J. Carpio	2. J. Corona	2. J. Nachura
3. J. Martinez	3. J. Nazario	
4. J. Morales	4. J. Velasco	
5. J. Tinga	5. J. De Castro	
6. J. Brion		
7. J. Peralta		

In the above, Justice Velasco opted to leave the majority, but he was quickly replaced by J. Tinga, who decided to take part in the second voting, and Justice Peralta, a newcomer. The minority maintained its five votes because, although Justices Reyes and Azcuna retired, Justice Velasco who changed side and Justice Santiago who now took part replaced them. Chief Justice Puno and Justice Nachura stayed out of it. The vote was 7-5-2.

But when on April 28, 2009 the Court acted on the sixteen municipalities' second motion for reconsideration, the vote resulted on a tie. Thus:

Even votes (annul)	Even votes (uphold)	No Part
1. J. Carpio	1. J. Santiago	1. C.J. Puno
2. J. Martinez	2. J. Corona	2. J. Nachura
3. J. Morales	3. J. Nazario	3. J. Quisumbing (on leave)
4. J. Tinga	4. J. Velasco	
5. J. Brion	5. J. De Castro	
6. J. Peralta	6. J. Bersamin	

In the above, the majority lost 1 vote owing to Justice Quisumbing going on leave. On the other hand, the minority gained 1 vote from Justice Bersamin, a newcomer. Three took no part, resulting in a vote of 6-6-3. The Court was divided in its interpretation of this 6-6 result. One group argued that the failure of the minority to muster a majority vote had the effect of maintaining the Court's last ruling. Some argued, however, that since the Constitution required a majority vote for declaring laws passed by Congress unconstitutional, the new voting restored the constitutionality of the subject laws.

When a re-voting took place on December 21, 2009 to clear up the issue, the result shifted in favor of the sixteen municipalities, thus:

Majority (uphold)	Minority (annul)	No Part
1. J. Corona	1. J. Carpio	1. C.J. Puno
2. J. Velasco	2. J. Morales	2. J. Nachura
3. J. De Castro	3. J. Brion	3. J. Del Castillo
4. J. Bersamin	4. J. Peralta	
5. J. Abad		
6. J. Villarama		

In the above, two Justices, Tinga and Martinez, from the former majority retired, leaving their group just 4 votes. On the other hand, although two Justices, Santiago and Nazario, also retired from the former minority, two new members, Justices Abad and Villarama, joined their rank. Justice Del Castillo, a new member, did not take part like the rest. The new vote was 6-4-3 (2 vacancies), with the new majority voting to uphold the constitutionality of the laws that converted the sixteen municipalities into cities.

But their victory was short-lived. When the Court voted on the motion for reconsideration of the losing League of Cities on August 24, 2010, three new members, Justices Perez, Mendoza, and Sereno, joined the Court. The majority shifted anew, thus:

Majority (annul)	Minority (uphold)	No Part
1. J. Carpio	1. C.J. Corona	1. J. Nachura
2. J. Morales	2. J. Velasco	2. J. Del Castillo
3. J. Brion	3. J. De Castro	
4. J. Peralta	4. J. Bersamin	
5. J. Villarama	5. J. Abad	
6. J. Mendoza	6. J. Perez	
7. J. Sereno		

Notably, Justice Villarama changed his vote and joined the rank of those who opposed the conversion of the sixteen municipalities into cities. Two new Justices (Mendoza and Sereno) joined the new majority of seven that voted to annul the subject laws. On the other hand, although one of their members left for the other side, the 6 votes of the new minority remained because a new member, Justice Perez, joined it.

The sixteen municipalities filed a motion for reconsideration of the new decision and voting took place on February 15, 2011. Justice Mendoza changed side and voted to uphold the constitutionality of the laws of the sixteen municipalities, resulting in a shift in the majority as follows:

Majority (uphold)	Minority (annul)	No Part
1. J. Corona	1. J. Carpio	1. J. Nachura
2. J. Velasco	2. J. Morales	2. J. Del Castillo
3. J. De Castro	3. J. Brion	
4. J. Bersamin	4. J. Peralta	
5. J. Abad	5. J. Villarama	
6. J. Perez	6. J. Sereno	
7. J. Mendoza		

To recapitulate what took place in this case:

One. The Justices did not decide to change their minds on a mere whim. The two sides filed motions for reconsideration in the case and the Justices had no options, considering their divided

views, but perform their duties and vote on the same on the dates the matters came up for resolution.

The Court is no orchestra with its members playing one tune under the baton of a maestro. They bring with them a diversity of views, which is what the Constitution prizes, for it is this diversity that filters out blind or dictated conformity.

Two. Of **twenty-three** Justices who voted in the case at any of its various stages, **twenty** Justices stood by their original positions. They never reconsidered their views. Only three did so and not on the same occasion, showing no wholesale change of votes at any time.

Three. To **flip-flop** means to vote for one proposition at first (**take a stand**), shift to the opposite proposition upon the second vote (**flip**), and revert to his first position upon the third (**flop**). Not one of the twenty-three Justices **flipped-flopped** in his vote.

Four. The three Justices who changed their votes did not do so in one direction. Justice Velasco changed his vote from a vote to annul to a vote to uphold; Justice Villarama from a vote to uphold to a vote to annul; and Justice Mendoza from a vote to annul to a vote to uphold. Not one of the three flipped-flopped since they never changed their votes again afterwards.

Notably, no one can dispute the right of a judge, acting on a motion for reconsideration, to change his mind regarding the case. The rules are cognizant of the fact that human judges could err and that it would merely be fair and right for them to correct their perceived errors upon a motion for reconsideration. The three Justices who changed their votes had the right to do so.

DISSENTING OPINION

CARPIO, *J*.:

This Court has made history with its repeated flip-flopping[1] in this case.

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[1] "Flip-flop" is defined as "an abrupt reversal of policy: the candidate flip-flopped on a number of issues" (The New Oxford Dictionary of English,

On 18 November 2008, the Court rendered a decision declaring **unconstitutional** the 16 Cityhood Laws. The decision became *final* after the denial of two motions for reconsideration filed by the 16 municipalities. An ***Entry of Judgment*** was made on 21 May 2009. The decision was ***executed*** (1) when the Department of Budget and Management issued LBM (Local Budget Memorandum) No. 61 on 30 June 2009, providing for the final Internal Revenue Allotment for 2009 due to the reversion of 16 newly created cities to municipalities; and (2) when the Commission on Elections issued Resolution No. 8670 on 22 September 2009, directing that voters in the 16 municipalities shall vote not as cities but as municipalities in the 10 May 2010 elections. In addition, fourteen Congressmen, having jurisdiction over the 16 respondent municipalities, filed House Bill 6303 seeking to amend Section 450 of the Local Government Code, as amended by Republic Act No. 9009. The proposed amendment was intended to correct the infirmities in the Cityhood Laws as cited by this Court in its 18 November 2008 Decision.[2]

Subsequently, the Court rendered three more decisions: (1) 21 December 2009, declaring the Cityhood Laws **constitutional**; (2) 24 August 2010, declaring the Cityhood Laws **unconstitutional**; and (3) 15 February 2011 declaring the Cityhood Laws **constitutional**. Clearly, there were three reversals or flip-flops in this case.

In the Resolution of 15 February 2011, the majority upheld the constitutionality of the 16 Cityhood Laws, declaring that (1) the Cityhood Laws do not violate Section 10, Article X of the Constitution; and (2) the Cityhood Laws do not violate Section 6, Article X and the equal protection clause of the Constitution.

1998); "a sudden reversal (as of policy or strategy)" (Merriam-Webster Unabridged Dictionary Version 3.0, 2003); "A reversal, as of a stand or position; *a foreign policy flip-flop*" (American Heritage Talking Dictionary, 1997); "A decision to reverse an earlier decision" (WordWeb Pro Version 6.4, 2011); "an abrupt reversal of policy" (Oxford Dictionaries Online, accessed 4 April 2011).

[2] http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=1162

I reiterate my unwavering position from the start — that the 16 Cityhood Laws are unconstitutional.

I.
The Cityhood Laws are laws other than the Local Government Code.

In sustaining the constitutionality of the 16 Cityhood Laws, the majority ruled in the Resolution of 15 February 2011 that "in effect, the Cityhood Laws amended RA No. 9009 through the exemption clauses found therein. Since the Cityhood Laws explicitly exempted the concerned municipalities from the amendatory RA No. 9009, **such Cityhood Laws are, therefore, also amendments to the LGC itself.**" In the Resolution denying petitioner's motion for reconsideration, the majority stated that "RA 9009, and, by necessity, the LGC, were amended, x x x by way of the express exemptions embodied in the exemption clauses."

This is egregious error.

Nowhere in the plain language of the Cityhood Laws can this interpretation be discerned. Neither the title nor the body of the Cityhood Laws sustains such conclusion. Simply put, there is absolutely nothing in the Cityhood Laws to support the majority decision that the Cityhood Laws **further amended** the Local Government Code, which exclusively embodies the essential requirements for the creation of cities, including the conversion of a municipality into a city.

An "amendment" refers to a change or modification to a previously adopted law.[3] An amendatory law merely modifies a specific provision or provisions of a previously adopted law.[4]

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[3] See *Commissioner of Customs v. Court of Tax Appeals*, G.R. Nos. L-48886-88, 21 July 1993, where the Court stated that "The change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had."

[4] See *Agpalo, Ruben E.*, *Statutory Construction*, Second Edition, 1990, pp. 278-279, citing *David v. Dancel*, G.R. No. L-21485, 25 July 1966, 17 SCRA 696 (1966).

Indisputably, an amendatory law becomes an *integral part* of the law it seeks to amend.

On the contrary, each Cityhood Law contains a uniformly worded Separability Clause which expressly states:

> Separability Clause. — **If, for any reason or reasons, any part or provision of this Charter shall be held** unconstitutional, invalid or **inconsistent with the Local Government Code of 1991**, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect. Moreover, in cases where this Charter is silent or unclear, the pertinent provisions of the Local Government Code shall govern, if so provided therein.[5] (Emphasis supplied)

Each Cityhood Law states that if any of its provisions is "**inconsistent with the Local Government Code**," the other consistent provisions "**shall continue to be in full force and effect.**" **The clear and inescapable implication is that any provision in each Cityhood Law that is "inconsistent with the Local Government Code" has no force and effect — in short, void and ineffective.** Each Cityhood Law expressly and unequivocally acknowledges the superiority of the Local Government Code, and that **in case of conflict, the Local Government Code shall prevail over the Cityhood Law.** Clearly, the Cityhood Laws do not amend the Local Government Code, and the Legislature never intended the Cityhood Laws to amend the Local Government Code. The clear intent and express

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[5] Section 63, Republic Act No. 9389 (Baybay, Leyte); Section 61, Republic Act No. 9390 (Bogo, Cebu); Section 62, Republic Act No. 9391 (Catbalogan, Samar); Section 63, Republic Act No. 9392 (Tandag , Surigao del Sur); Section 63, Republic Act No. 9393 (Lamitan, Basilan); Section 61, Republic Act No. 9394 (Borongan, Samar); Section 63, Republic Act No. 9398 (Tayabas, Quezon); Section 57, Republic Act No. 9404 (Tabuk, Kalinga); Section 62, Republic Act No. 9405 (Bayugan, Agusan del Sur); Section 63, Republic Act No. 9407 (Batac, Ilocos Norte); Section 62, Republic Act No. 9408 (Mati, Davao Oriental); Section 62, Republic Act No. 9409 (Guihulngan, Negros Oriental); Section 61, Republic Act No. 9434 (Cabadbaran, Agusan del Norte); Section 64, Republic Act No. 9435 (El Salvador, Misamis Oriental); Section 63, Republic Act No. 9436 (Carcar, Cebu); and Section 65, Republic Act No. 9491 (Naga, Cebu).

language of the Cityhood Laws is for these laws to conform to the Local Government Code and not the other way around.

To repeat, every Cityhood Law unmistakably provides that any provision in the Cityhood Law that is inconsistent with the Local Government Code is void. It follows that the Cityhood Laws cannot be construed to authorize the creation of cities that have not met the prevailing ₱100 million income requirement prescribed without exception in the Local Government Code.

Moreover, Congress, in providing in the Separability Clause that the Local Government Code shall prevail over the Cityhood Laws, treats the Cityhood Laws as separate and distinct from the Local Government Code. In other words, **the Cityhood Laws *do not form integral parts* of the Local Government Code but are separate and distinct laws**. There is therefore no question that the Cityhood Laws are laws ***other*** than the Local Government Code. As such, the Cityhood Laws cannot stipulate an exception from the requirements for the creation of cities, prescribed in the Local Government Code, without running afoul of the explicit mandate of Section 10, Article X of the 1987 Constitution.

This constitutional provision reads:

> No province, city, municipality, or *barangay* shall be created, divided, merged, abolished or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied)

The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code itself** and not in any other law. There is only one Local Government Code.[6] To avoid discrimination and ensure uniformity and equality, the Constitution expressly requires Congress to stipulate in the Local Government Code itself all the criteria necessary for the creation of a city, including

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[6] Republic Act No. 7160, as amended.

the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws.

II.
The increased income requirement of ₱100 million is neither arbitrary nor difficult to comply.

The majority resolution of 15 February 2011 states that "the imposition of the ₱100 million average annual income requirement for the creation of component cities was **arbitrarily** made." The majority resolution further declares: "x x x there was no evidence or empirical data, **such as inflation rates**, to support the choice of this amount. The imposition of a very high income requirement of ₱100 million, increased from ₱20 million, was **simply to make it extremely difficult for municipalities to become component cities**."

This is glaring error.

In stating that there is no evidence to support the increased income requirement, the majority is requiring the Legislature, the sole law-making body under the Constitution, to provide evidence justifying the economic rationale, like inflation rates, for the increase in income requirement. The Legislature, in enacting RA No. 9009, is not required by the Constitution to show the courts data like inflation figures to support the increased income requirement. Besides, even assuming the inflation rate is zero, this Court cannot invalidate the increase in income requirement on such ground. **A zero inflation rate does not bar the Legislature from increasing the income requirement to convert a municipality into a city, or increasing taxes or tax rates, or increasing capital requirements for businesses.** This Court should not venture into areas of analyses obviously beyond its competence.

As long as the increased income requirement is not impossible to comply, such increase is a policy determination involving the wisdom of the law, which exclusively lies within the province of the Legislature. When the Legislature enacts laws increasing taxes, tax rates, or capital requirements for businesses, the Court cannot refuse to apply such laws on the ground that there is no

economic justification for such increases. Economic, political or social justifications for the enactment of laws go into the wisdom of the law, outside the purview of judicial review. This Court cannot refuse to apply the law unless the law violates a specific provision of the Constitution. There is plainly nothing unconstitutional in increasing the income requirement from ₱20 million to ₱100 million because such increase does not violate any express or implied provision of the Constitution.

The majority declares that the ₱100 million income requirement under RA No. 9009 was imposed **"simply to make it extremely difficult for the municipalities to become component cities."** In short, the majority is saying that the Legislature, out of sheer whim or spite at municipalities, increased the income requirement from ₱20 million to ₱100 million. Thus, the majority applied the ₱20 million income requirement under the repealed law, not the ₱100 million income requirement under the prevailing law. Yet, the majority does not state that the ₱100 million income requirement is unconstitutional. The majority simply refuses to apply the prevailing law, choosing instead to apply a repealed law. There is neither law nor logic in the majority decision.

The majority's conclusion that the Legislature increased the income requirement from ₱20 million to ₱100 million "**simply to make it difficult for the municipalities to become component cities**" is not only unfair to the Legislature, it is also grossly erroneous. Contrary to the majority's baseless conclusion, the increased income requirement of ₱100 million is not at all difficult to comply. As pointed out by petitioner, the cities of San Juan[7] and Navotas,[8] which met the ₱100 million income requirement, were created at the same time as the enactment of the Cityhood Laws by the same 13th Congress.[9]

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[7] Through Republic Act No. 9388. Approved on 11 March 2007.

[8] Through Republic Act No. 9387. Approved on 10 March 2007.

[9] Republic Act No. 9356, converting the municipality of Meycauayan, Bulacan into a city, was enacted on 2 October 2006 also during the 13th Congress.

Prior to this, the City of Sta. Rosa, which also met the ₱100 million income requirement, was created through Republic Act No. 9264.[10] Subsequently, the cities of Dasmariñas in Cavite[11] and Biñan in Laguna[12] were created in full compliance with the ₱100 million income criterion.

Further disproving the majority's erroneous conclusion, an additional twenty-one (21) municipalities have satisfied the ₱100 million income requirement for the creation of cities.[13] Accordingly, petitioner League of Cities has endorsed the cityhood application of these 21 municipalities.[14] These municipalities are:

- Cabuyao and San Pedro (Laguna)
- Cainta, Taytay, and Binangonan (Rizal)
- Bacoor, Gen. Trias, Imus, Carmona, and Silang (Cavite)
- San Pedro (Laguna)
- Pantabangan (Nueva Ecija)
- Calaca, Sto. Tomas, Bauan and Nasugbu (Batangas)
- Mauban in (Quezon)
- Marilao, Sta. Maria and Norzagaray (Bulacan)
- Limay (Bataan)

Compliance by these municipalities with the ₱100 million income requirement underscores the fact that the ₱100 million income requirement is not difficult to comply at all, contrary to the baseless and speculative conclusion in the majority decision. In short, the majority decision is based on patently and undeniably false and erroneous premises.

Indisputably, right after the enactment of RA No. 9009, Congress passed laws converting municipalities into cities using the new

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[10] Enacted 10 March 2004.

[11] Through Republic Act No. 9723. Approved on 15 October 2009.

[12] Through Republic Act No. 9740. Approved on 30 October 2009.

[13] http://www.philstar.com/Article.aspx?articleId=666748&publicationSubCategoryId=200

[14] http://www.philstar.com/Article.aspx?articleId=666748&publicationSubCategoryId=200

₱100 million income requirement. Subsequently, Congress enacted the 16 Cityhood Laws using the old ₱20 million income requirement. Thereafter, Congress again passed laws converting additional municipalities into cities using the ₱100 million income requirement. The 16 Cityhood Laws stick out like a sore thumb, starkly showing an obvious violation of the equal protection clause. The Cityhood Laws create distinctly privileged cities with only ₱20 million annual income, discriminating against cities with ₱100 million annual income created ***before and after*** the enactment of the Cityhood Laws. This kind of discrimination is precisely what Section 10, Article X of the Constitution seeks to prohibit when it commands that "no x x x city x x x shall be created x x x except in accordance with the criteria established in the local government code."

The majority harp on the fact that 59 existing cities had failed as of 2006 to post an average annual income of ₱100 million.

Suffice it to state that there is no Constitutional or statutory requirement for the 59 ***existing*** cities to comply with the ₱100 million income requirement. **Obviously, these cities were already cities prior to the amendment of the Local Government Code providing for the increased income requirement of ₱100 million.** In other words, at the time of their creation, these cities have complied with the criteria prescribed under the old Local Government Code for the creation of cities, and thus are not required to comply with the ₱100 million income requirement of the prevailing Local Government Code. It is utterly misplaced and grossly erroneous to cite the "non-compliance" by the 59 existing cities with the increased income requirement of ₱100 million to conclude that the ₱100 million income requirement is arbitrary and difficult to comply.

Moreover, as stated, the majority do not find the increased income requirement of ₱100 million unconstitutional or unlawful. Unless the ₱100 million income requirement violates a provision of the Constitution or a law, such requirement for the creation of a city must be strictly complied with. Any local government unit applying for cityhood, whether located in or outside the metropolis and whether within the National Capital Region or

not, must meet the ₱100 million income requirement prescribed by the prevailing Local Government Code. There is absolutely nothing unconstitutional or unlawful if the ₱100 million income requirement is easily complied with by local government units within or near the National Capital Region. The majority's groundless and unfair discrimination against these metropolis-located local government units must necessarily fail.

Further, that San Juan and Navotas had not allegedly been classified by the President as highly urbanized cities, pursuant to Section 453 of the Local Government Code, does not signify that these cities do not meet the ₱100 million income requirement. In fact, the majority concedes that it is presumed that San Juan and Navotas cities have complied with the ₱100 million income requirement. Besides, it is totally pointless to fault the cities of San Juan and Navotas for an unperformed duty of the President.

III.
The reduction of the share in the Internal Revenue Allotment will adversely affect the cities' economic situation.

In the Resolution of 15 February 2011, the majority declared that petitioner's protest against the reduction of their just share in the Internal Revenue Allotment "**all boils down to money**," criticizing petitioners for overlooking the alleged need of respondent municipalities to become channels of economic growth in the countryside.

The majority gravely loses sight of the fact that "the members of petitioner League of Cities are also in need of the same resources, and are responsible for development imperatives that need to be done for almost 40 million Filipinos, as compared to only 1.3 million Filipinos in the respondent municipalities." As pointed out by petitioner, "this is just about equal to the population of Davao City, whose residents, on a per capita basis, receive less than half of what respondent municipalities' residents would receive if they become cities. **Stated otherwise, for every peso that each Davaoeño receives, his counterpart in the respondent municipality will receive more than two pesos.**"

In addition, the majority conveniently forgets that members of the LCP have more projects, more contractual obligations, and more employees than respondent municipalities. If their share in the Internal Revenue Allotment is unreasonably reduced, it is possible, even expected, that these cities may have to lay-off workers and abandon projects, greatly hampering, or worse paralyzing, the delivery of much needed public services in their respective territorial jurisdictions.

Obviously, petitioner's protest does not boil down to money. **It boils down to equity and fairness, rational allocation of scarce resources, and above all, faithful compliance with an express mandatory provision of the Constitution.** No one should put a monetary value to compliance with an express command of the Constitution. Neither should any one, least of all this Court, disregard a patent violation of the Constitution just because the issue also involves monetary recovery. To do so would expose the stability of the Constitution to the corrosive vagaries of the marketplace.

IV.
Not substantial compliance,
but outright violation of the Constitution.

In his Concurring Opinion to the Resolution of 15 February 2011, Justice Roberto A. Abad stated, "These new cities have not altogether been exempted from the operation of the Local Government Code covering income requirement. **They have been expressly made subject to the lower income requirement of the old code**. **There remains, therefore, substantial compliance with the provision of Section 10, Article X of the Constitution.**"

This is gross error.

There is a wide disparity — an ₱80 million difference — in the income requirement of ₱20 million under the old Local Government Code and the ₱100 million requirement under the prevailing Local Government Code. By any reasonable yardstick known to man since the dawn of civilization, compliance with the old income requirement, which is only 20% compliance

with the new income requirement under the prevailing law, cannot be deemed "substantial compliance." It is like saying that those who obtain a general average of 20% in the Bar Examinations are in "substantial compliance" with the requirement for admission to the Bar where the highest possible score is 100%.

RA No. 9009 amended the Local Government Code precisely because the criteria in the old Local Government Code were no longer sufficient. In short, RA No. 9009 repealed the old income requirement of ₱20 million, a requirement that no longer exists in our statute books. Compliance with the old income requirement is compliance with a repealed, dead, and non-existent law — a totally useless, futile, and empty act. Worse, compliance with the old requirement is an ***outright violation*** of the Constitution which expressly commands that "**no x x x city x x x shall be created x x x except in accordance with the criteria established in the local government code**." To repeat, applying what Justice Abad calls "the lower income requirement of the old code" is applying a repealed, dead, and non-existent law, which is exactly what the majority decision has done.

The invocation here of "substantial compliance" of the Constitution reminds us of what Justice Calixto Zaldivar wrote in his dissenting opinion in *Javellana v. Executive Secretary:*[15] "It would be indulging in sophistry to maintain that the voting in the citizens assemblies amounted to a substantial compliance with the requirements prescribed in Section 1 of Article XV of the 1935 Constitution." The same can be said in this case.

A final point. There must be strict compliance with the express command of the Constitution that "**no city x x x shall be created x x x except in accordance with the criteria established in the local government code.**" Substantial compliance is insufficient because it will discriminate against all other cities that were created **before and after the enactment** of the Cityhood Laws in strict compliance with the criteria in the Local Government Code, as amended by RA No. 9009. The conversion of municipalities into new cities means an increase in the Internal

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[15] G.R. No. L-36142, 31 March 1973.

Revenue Allotment of the former municipalities and a **corresponding decrease** in the Internal Revenue Allotment of all other existing cities. There must be strict, not only substantial, compliance with the constitutional requirement because the economic lifeline of existing cities may be seriously affected. Thus, the invocation of "substantial compliance" with constitutional requirements is clearly misplaced in this case.

V.
Conclusion

To repeat, the Constitution expressly requires Congress to stipulate in the Local Government Code itself all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. To avoid discrimination and ensure uniformity and equality, such criteria cannot be embodied in any other law except the Local Government Code. In this case, the Cityhood Laws, which are unmistakably laws ***other*** than the Local Government Code, provide an exemption from the increased income requirement for the creation of cities under Section 450 of the Local Government Code, as amended by RA No. 9009. Clearly, the Cityhood Laws contravene the letter and intent of Section 10, Article X of the Constitution.

Moreover, by express provision in the Separability Clause of each Cityhood Law, in case of inconsistency between the Cityhood Law and the Local Government Code, the latter shall prevail. Thus, the ₱100 million income requirement in the Local Government Code prevails over the ₱20 million income requirement under the Cityhood Laws.

Finally, this Court must be true to its sworn duty to uphold, defend, and protect the Constitution **fully and faithfully**, without "indulging in sophistry" or seeking refuge behind a patently dubious invocation of "substantial compliance" with the Constitution.

Accordingly, I vote to **GRANT** the motion for reconsideration of the League of Cities of the Philippines.

Five. Evidently, the voting was not a case of massive flip-flopping by the Justices of the Court. Rather, it was a case of tiny shifts in the votes, occasioned by the consistently slender margin that one view held over the other. This reflected the nearly even soundness of the opposing advocacies of the contending sides.

Six. It did not help that in one year alone in 2009, seven Justices retired and were replaced by an equal number. It is such that the resulting change in the combinations of minds produced multiple shifts in the outcomes of the voting. No law or rule requires succeeding Justices to adopt the views of their predecessors. Indeed, preordained conformity is anathema to a democratic system.

The charge of flip-flopping by the Court or its members is unfair.

EN BANC

[G.R. No. 180050. April 12, 2011]

RODOLFO G. NAVARRO, VICTOR F. BERNAL, and RENE O. MEDINA, *petitioners, vs.* **EXECUTIVE SECRETARY EDUARDO ERMITA, representing the President of the Philippines; Senate of the Philippines, represented by the SENATE PRESIDENT; House of Representatives, represented by the HOUSE SPEAKER; GOVERNOR ROBERT ACE S. BARBERS, representing the mother province of Surigao del Norte; GOVERNOR GERALDINE ECLEO VILLAROMAN, representing the new Province of Dinagat Islands,** *respondents,* **CONGRESSMAN FRANCISCO T. MATUGAS, HON. SOL T. MATUGAS, HON. ARTURO CARLOS A. EGAY, JR., HON. SIMEON VICENTE G. CASTRENCE, HON. MAMERTO D. GALANIDA, HON. MARGARITO M. LONGOS, and HON. CESAR M. BAGUNDOL,** *intervenors.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; *LOCUS STANDI*, CONSTRUED; PRESENT IN CASE AT BAR. —** For a party to have *locus standi*, one must allege "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Because constitutional cases are often public actions in which the relief sought is likely to affect other persons, a preliminary question frequently arises as to this interest in the constitutional question raised. It cannot be denied that movants-intervenors will suffer direct injury in the event their Urgent Motion to Recall Entry of Judgment dated October 29, 2010 is denied and their Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 is denied with finality. Indeed, they have sufficiently shown that they have a personal and substantial interest in the case, such that if the May 12, 2010 Resolution be not reconsidered, their election to their respective positions during the May 10, 2010 polls and its concomitant effects would all be nullified and be put to naught. Given their unique circumstances, movants-intervenors should not be left without any remedy before this Court simply because their interest in this case became manifest only after the case had already been decided. The consequences of such a decision would definitely work to their disadvantage, nay, to their utmost prejudice, without even them being parties to the dispute. Such decision would also violate their right to due process, a right that cries out for protection. Thus, it is imperative that the movants-intervenors be heard on the merits of their cause. We are not only a court of law, but also of justice and equity, such that our position and the dire repercussions of this controversy should be weighed on the scales of justice, rather than dismissed on account of mootness.

2. **ID.; ID.; ID.; MOOT AND ACADEMIC PRINCIPLE; WHEN MAY THE COURT DECIDE CASES OTHERWISE MOOT AND ACADEMIC; EXEMPLIFIED. —** The "moot and academic" principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic, if: (1) there

is a grave violation of the Constitution; (2) there is an exceptional character of the situation and the paramount public interest is involved; (3) the constitutional issue raised requires formation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review. The second exception attends this case. This Court had taken a liberal attitude in the case of *David v. Macapagal-Arroyo*, where technicalities of procedure on *locus standi* were brushed aside, because the constitutional issues raised were of paramount public interest or of transcendental importance deserving the attention of the Court. Along parallel lines, the motion for intervention should be given due course since movants-intervenors have shown their substantial legal interest in the outcome of this case, even much more than petitioners themselves, and because of the novelty, gravity, and weight of the issues involved.

3. **ID.; ID.; JUDGMENTS; WHEN RECALL OF ENTRIES OF JUDGMENT ALLOWED; CASE AT BAR. —** Verily, the Court had, on several occasions, sanctioned the recall entries of judgment in light of attendant extraordinary circumstances. The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final. In this case, the compelling concern is not only to afford the movants-intervenors the right to be heard since they would be adversely affected by the judgment in this case despite not being original parties thereto, but also to arrive at the correct interpretation of the provisions of the LGC with respect to the creation of local government units. In this manner, the thrust of the Constitution with respect to local autonomy and of the LGC with respect to decentralization and the attainment of national goals, as hereafter elucidated, will effectively be realized. x x x. It must be borne in mind that the central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents. The criteria prescribed by the LGC, *i.e.*, income, population and land area, are all designed to accomplish these results. In this light, Congress, in its collective wisdom, has debated on the relative weight of each of these three criteria, placing emphasis on which of them should enjoy preferential consideration. Without

doubt, the primordial criterion in the creation of local government units, particularly of a province, is economic viability. This is the clear intent of the framers of the LGC.

4. **POLITICAL LAW; LOCAL GOVERNMENT CODE; REQUISITES FOR THE CREATION OF PROVINCES; EXEMPTION FROM LAND AREA REQUIREMENT SHOULD ALSO BE APPLICABLE TO THE CREATION OF PROVINCES; EXPLAINED. —** With respect to the creation of municipalities, component cities, and provinces, the three (3) indicators of viability and projected capacity to provide services, *i.e.*, income, population, and land area, are provided for. But it must be pointed out that when the local government unit to be created consists of one (1) or more islands, it is exempt from the land area requirement as expressly provided in Section 442 and Section 450 of the LGC if the local government unit to be created is a municipality or a component city, respectively. This exemption is absent in the enumeration of the requisites for the creation of a province under Section 461 of the LGC, although it is expressly stated under Article 9(2) of the LGC-IRR. There appears neither rhyme nor reason why this exemption should apply to cities and municipalities, but not to provinces. In fact, considering the physical configuration of the Philippine archipelago, there is a greater likelihood that islands or group of islands would form part of the land area of a newly-created province than in most cities or municipalities. It is, therefore, logical to infer that the genuine legislative policy decision was expressed in Section 442 (for municipalities) and Section 450 (for component cities) of the LGC, but was inadvertently omitted in Section 461 (for provinces). Thus, when the exemption was expressly provided in Article 9(2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Section 461 of the LGC — and to reflect the true legislative intent. It would, then, be in order for the Court to uphold the validity of Article 9(2) of the LGC-IRR.

DEL CASTILLO, *J., concurring opinion:*

POLITICAL LAW; STATUTES; STATUTES MUST BE READ AS A WHOLE, THAT EACH AND EVERY PART MUST BE CONSIDERED IN ORDER TO ASCERTAIN ITS MEANING; APPLICATION IN CASE AT BAR. — I would submit, however,

that it is equally true that the statute must be read as a whole, that its clauses and phrases are not detached and isolated expressions, but that each and every part must be considered in order to ascertain its meaning. Therefore, the statute, read as a whole, in the light of its legislative history, cannot be said to preclude the interpretation placed on it by the majority. But in interpreting a statute [such as the Local Government Code], we cannot take one sentence, one section, or even the entire statute alone and say that it has a "plain meaning" as if there were an objective formula in the few words simply waiting to be grasped by the courts. Instead the statute must be read as a whole, taking all of its provisions and reading them in the context of the legal fabric to which they are to be applied. An interpretation that creates an admittedly anomalous result is not salved by the majority's apologia that, if we read the statute in that fashion, Congress created the anomaly. Instead the question is whether the statute read as a whole was intended by Congress to create such results. The law is not an isolated bundle of capricious and inconsistent commands by a legislature presumed to react mindlessly. It is also relevant that the Senate and the House of Representatives, represented by the Office of the Solicitor General, have asserted that Congress intended that provinces composed of one or more islands should be exempted from the 2,000 sq. km. land area requirement. Surely, the legislature's will in this case should be given deference, as a co-equal branch of government operating within its area of constitutional authority. x x x I do not propose that the Court overturn its settled precedent to the effect that Implementing Rules and Regulations cannot go beyond the terms of the statute. But under these limited circumstances — where a reading of the entire law reveals inconsistencies which this Court must reconcile, where the legislature has informed the Court of its intentions in drafting the law, and where the legislative history of the LGC leads one to the inescapable conclusion that the primary consideration in the creation of provinces is actually administrative convenience, economic viability, and capacity for development — then it would be far more just to give effect to the will of the legislature in this case.

ABAD, *J., concurring opinion:*

REMEDIAL LAW; APPEALS TO THE SUPREME COURT; THE SUPREME COURT AS A COLLEGIAL BODY ACTS BY

CONSENSUS AMONG ITS FIFTEEN MEMBERS. — The Court is not a living person whose decisions and actions are ruled by the whims of one mind. As a collegial body, the Court acts by consensus among its fifteen members. In the *League of Cities,* neither all the Justices nor most of them did a somersault as implicitly suggested. x x x Neither the Court nor its Justices flip-flopped in this case. They did not take one position, later moved to the opposite position, and then reverted to the first. They merely exercised their right to reconsider an erroneous ruling.

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

1. **POLITICAL LAW; LOCAL GOVERNMENT CODE; CREATION OF PROVINCE; TWO OF THE THREE MINIMUM REQUIREMENTS MUST BE SATISFIED WITH THE MINIMUM INCOME REQUIREMENT AS ONE OF THE TWO; NOT FULFILLED IN CASE AT BAR. — The Dinagat Islands province simply does not meet the criteria for the creation of a province.** To implement the Constitution and for reasons of political practicality and economic viability, Section 461 of the Local Government Code bars the creation of provinces unless **two of three minimum requirements** are met. xxx. Section 461 requires a province to meet the minimum income requirement **and** either the minimum land area or minimum population requirement. **In short, two of the three minimum requirements must be satisfied, with the minimum income requirement one of the two.** The Dinagat Islands province, whose income at the time of its creation in 2006 was ₱82,696,433.22, satisfies **only** the minimum income requirement. **The Dinagat Islands province does not meet either the minimum land area requirement or the minimum population requirement.** Indisputably, Dinagat Islands cannot qualify as a province under Section 461 of the Local Government Code, the law that governs the creation of provinces. Based on the 2000 census, Dinagat Islands' population stood only at 106,951, less than half of the statutory minimum of 250,000. In the census conducted seven years later in 2007, one year after its creation, its population grew by only 13,862, reaching 120,813, still less than half of the minimum population required. The province does not fare any better in land area, with its main island, one sub-island and

around 47 islets covering only 802.12 square kilometers, less than half of the 2,000 square kilometers minimum land area required. Dinagat Islands province satisfies only the minimum income requirement under Section 461 of the Local Government Code. xxx. **Even assuming that the minimum land area requirement does not apply to island provinces, an assumption that is devoid of any legal basis, Dinagat Islands still fail to meet the minimum population requirement.** Under Section 461 of the Code, two of the three minimum requirements must be satisfied in the creation of a province, with the income requirement being one of the two minimum requirements. The majority's ruling today creates the Dinagat Islands province despite the indisputable fact that it satisfies only one of the two necessary requirements prescribed in Section 461. The majority's ruling clearly violates Section 461 of the Code, no question about it. xxx. To treat land area ***as an alternative*** to the minimum population requirement (based on the conjunctive "either" in Section 461) destroys the supremacy of the Constitution, making the statutory text prevail over the clear constitutional language mandating a minimum population through the requirement of proportional representation in the apportionment of all legislative districts. **In short, in the creation of a province neither Congress nor the Executive can replace the minimum population requirement with a land area requirement because the creation of a province necessarily creates at the same time a legislative district, which under the Constitution must have a minimum population of 250,000**. Because of the majority's ruling today, the House of Representatives will now count among its members a representative of a "premium" district consisting, as of the 2007 census, of only 120,813 constituents, well below the minimum population of 250,000 his peers from the other regular districts represent. This malapportionment tolerates, on the one hand, vote undervaluation in overpopulated districts, and, on the other hand, vote overvaluation in underpopulated ones, in clear breach of the "one person, one vote" rule rooted in the Equal Protection Clause. To illustrate, the 120,813 inhabitants of Dinagat Islands province are entitled to send one representative to the House of Representatives. In contrast, a legislative district in Metro Manila needs 250,000 inhabitants to send one representative to the House of Representatives. **Thus, one vote in Dinagat**

Islands has the weight of more than two votes in Metro Manila for the purpose of representation in the House of Representatives. This is not what our "one person, one vote" representative democracy is all about.

2. **ID.; ID.; ID.; THE EXCEPTION CREATED IN THE IMPLEMENTING RULE EXEMPTING PROVINCES COMPOSED OF ONE OR MORE ISLANDS FROM THE MINIMUM LAND AREA REQUIREMENT IS VOID FOR BEING *ULTRA VIRES*; EXPLAINED. —** The Local Government Code contains **no exception** to the income and population or land area requirements in creating provinces. What the Code relaxed was the *contiguity* rule for provinces consisting of "two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province." The minimum land area of 2,000 square kilometers in the Code for the creation of a province was never changed, and **no exception was ever created by law**. Hence, **the exception created in the implementing rule** of the Local Government Code, exempting provinces "composed of one (1) or more islands" from the minimum land area requirement, is void for being *ultra vires*, granting a statutory exception that the Local Government Code clearly withheld. The implementing rule, being a mere administrative regulation to implement the Local Government Code, cannot amend the Code but must conform to the Code. Only Congress, and not any other body, is constitutionally empowered to create, through amendatory legislation, exceptions to the land area requirement in Section 461 of the Code. xxx. [I]n *Macalintal v. Comelec*, we ruled that a congressional oversight committee has no power to approve or disapprove the implementing rules of laws because the implementation of laws is purely an executive function. The intrusion of the congressional Oversight Committee in the drafting of implementing rules is a violation of the separation of powers enshrined in the Constitution. This Court cannot allow such intrusion without violating the Constitution. x x x Congress has no power to construe the law. Only the courts are vested with the power to construe the law. Congress may provide in the law itself a definition of terms but it cannot define or construe the law through its Oversight Committee ***after*** it has enacted the law because such power belongs to the courts. It is not difficult to see why Congress

allowed an exception to the land area requirement in the creation of municipalities and cities **but withheld it for provinces**. The province, as the largest political and corporate subdivision of local governance in this country, serves as the geographic base from which municipalities, cities and even another province will be carved, fostering local development.

3. **ID.; ID.; ID.; POPULATION AND LAND AREA ARE THE PIVOTAL FACTORS IN FUNDING LOCAL GOVERNMENT UNITS; JUSTIFIED. —** Far from being dispensable components in the creation of local government units, population and land area — not income – are the pivotal factors in funding local government units. Under the Local Government Code, these components determine 75% of the share from the national taxes (Internal Revenue Allotment or IRA) each local government unit receives, the lifeblood of their operations, based on the following formula: a) Population – Fifty percent (50%); b) Land Area – Twenty-five percent (25%); (c) Equal sharing – Twenty-five percent (25%). x x x Thus, population, with a weight of 50%, ranks first in importance in determining the financial entitlement of local government units, followed by land area with a weight of 25%. By treating Dinagat Islands' land area of 802.12 square kilometers as compliant with the 2,000 square kilometers minimum under Section 461, **the majority *effectively* included in their land area computation the enclosed marine area or waters of Dinagat Islands.** This disposition not only reverses, without cause, decades' old jurisprudence, it also wreaks havoc on the national government's allocation of the internal revenue allotment to existing island provinces which would be justified in invoking today's ruling to clamor for increased revenue shares due to increased "land area."

BRION, ***J., dissenting opinion:***

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; MOTION FOR RECONSIDERATION; AS A RULE, 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; WHEN VIOLATED. — Violation of the Rule on Reconsideration.** By a 9-6 vote, the Court declared the entry of judgment lifted.

In so doing, it completely disregarded its own rule that any 2nd motion for reconsideration **can only be entertained through a vote of 2/3 of the actual membership, or of 10 members, of the Court.** It likewise disregarded the rule that 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.** It conveniently forgot, too, when it subsequently claimed that the motion it was considering was not by respondent Governor Ecleo but by the would-be intervenors, that what an original party could no longer do with respect to a final decision, would-be intervenors — practically representing the same interests and who had not even been recognized by this Court — cannot also do; otherwise, what is *directly* prohibited is allowed through indirect means. Unbelievably, among the majority's supporting arguments to support their violation, was that (1) a motion to lift entry of final judgment is not a motion for reconsideration of the decision sought to be declared non-final; and that (2) no exact provision of the Internal Rules covers the lifting of an entered final judgment. x x x The judgment in a case becomes final by operation of law (after the lapse of fifteen [15] days from the parties' receipt of the judgment) or upon the Court's declaration of the judgment's finality. Entry of Judgment by the Clerk of Court follows the finality of a judgment, *i.e.*, if no motion for reconsideration is filed with the Court within fifteen (15) days from the parties' receipt of the judgment. As mentioned above, no second motion for reconsideration can be entertained once a judgment has become final. In this case, the Court disregarded its own rules and entertained a motion to lift the entry of judgment and to reopen the case. It was not an ordinary violation as the judgment lifted was already final. The respondent Governor's motion to lift entry of judgment was effectively a **third motion for reconsideration** (as its objective is to open the final decision for another consideration) and its consequences need no elaborate argument to be understood. For the would-be intervenors, it was a matter of putting the cart before the horse — a move to lift the entry of judgment even before the would-be intervenors had their personality recognized by the Court.

2. **ID.; ID.; ID.; IMMUTABILITY OF FINAL JUDGMENT; PRINCIPLE EXPLAINED. —** The **principle of immutability**

of a final judgment stands as one of the pillars supporting a strong, credible and effective court. To quote what this Court has repeatedly stated on this principle: "It is a hornbook rule that **once a judgment has become final** and executory, **it may no longer be modified in any respect,** even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of **whether the modification is attempted to be made by the court rendering it or *by the highest court of the land*,** as what remains to be done is the purely ministerial enforcement or execution of the judgment. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that **at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law.** [x x x], the Supreme Court reiterated that the doctrine of immutability of judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since **litigations must somehow come to an end for otherwise, it would "be even more intolerable than the wrong and injustice it is designed to protect."**

3. **ID.; ID.; ACTIONS; INTERVENTION; WHEN THE COURT'S DECISION IS ALREADY FINAL, INTERVENTION COULD NO LONGER BE ALLOWED; VIOLATION IN CASE AT BAR. — Violation of the Rule on Intervention.** The Court disregarded as well the rule on interventions. The motion for intervention was initially denied **since the Court's decision was already final, and intervention could no longer be allowed**. To go around this rule, the would-be intervenors, without first successfully securing leave to intervene, instead filed its own motion to lift entry of judgment - the same 2nd motion from the original respondents that the Court previously simply noted without action. The Court granted the motion to lift judgment by a 9-6 vote, under the fiction that it was an intervening party, not the barred original respondents, who had asked for it. To complete this blow-by-blow account, the respondents' legal tactician used the ploy of first reopening the case (initially through the original respondents, and subsequently solely through the would-be intervenors), and thereafter moved to allow intervention since the original respondents had by then exhausted their arguments for the constitutionality of RA 9355. On two previous attempts, the

original respondents had failed. To get around the insurmountable block posed by the rule on 2nd motions for reconsideration, they fell back on their modified Resolution with the position that another party — the would-be intervenors — wanted to lift the entry of judgment. Once the entry of judgment was lifted and intervention was allowed, it was an easy step to reopen the arguments, add to what the original respondents presented, and submit the case for a ruling on the merits. **The same magic numbers of course prevailed all throughout: 9 to 6.**

PERALTA, ***J., dissenting opinion:***

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; MOTION TO INTERVENE MAY BE FILED AT ANY TIME BEFORE RENDITION OF JUDGMENT BY THE TRIAL COURT; NOT PRESENT IN CASE AT BAR. —** Under Section 2, Rule 19 of the Rules of Court, a motion to intervene may be filed at any time before rendition of judgment by the trial court. The Court ruled that since this case originated from an original action filed before this Court, the appropriate time to file the motion-in-intervention is before and not after resolution of this case, citing ***Republic v. Gingoyon***. It should be noted that this case was decided on February 10, 2010, and the motions for reconsideration of the Decision were denied in the Resolution dated May 12, 2010. The Decision dated February 10, 2010 became final and executory on May 18, 2010. Movants-intervenors' *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010* was filed only on June 18, 2010, clearly after the Decision dated February 10, 2010 had became final and executory; hence, the said motion was correctly denied.

2. **POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991; CREATION OF PROVINCE; R.A. NO. 9355 IS NOT A LAW AMENDING THE LOCAL GOVERNMENT CODE ON THE CRITERIA FOR THE CREATION OF PROVINCE BUT A STATUTE CREATING THE PROVINCE OF DINAGAT ISLANDS; SUSTAINED. —** As cited in ***Yazaki Torres Manufacturing, Inc. v. Court of Appeals***, legislative power is the power to make, alter, and repeal laws; thus, the authority

to amend, change, or modify a law is part of such legislative power. However, in this case, R.A. No. 9355, is *not* a law amending the Local Government Code on the criteria for the creation of a province. Instead, R.A. No. 9355 is a statute creating the Province of Dinagat Islands; hence, subject to the constitutional provision on the creation of a province. The constitutional provision on the creation of a province found in Section 10, Article X of the Constitution states: x x x Pursuant to the Constitution, the Local Government Code of 1991, in Section 461 thereof, prescribed the criteria for the creation of a province. Hence, R.A. No. 9355 did not amend the Local Government Code, but was subject to the criteria contained in Section 461 of the Local Government Code in creating the Province of Dinagat Islands. x x x Thus, even the Local Government Code clearly provides that Congress may enact a law creating a local government unit, which in this case involves the creation of a province, but such creation is subject to such limitations and requirements prescribed in the Local Government Code. Hence, the creation of the Province of Dinagat Islands is subject to the requirements contained in Section 461 of the Local Government Code. Since R.A. No. 9355 failed to comply with the land area or population requirement in the creation of the province, it was declared unconstitutional in the Decision dated February 10, 2010.

3. **ID.; STATUTES; THE IMPLEMENTING RULES AND REGULATIONS CANNOT GO BEYOND THE TERMS AND PROVISIONS OF THE BASIC LAW; VIOLATION IN CASE AT BAR. —** Contrary to the contention of the movants-intervenors, Article 9 (2) of the Rules and Regulations Implementing the Local Government Code, which exempts a proposed province from the land area requirement if it is composed of one or more islands, cannot be deemed incorporated in R.A. No. 9355, because rules and regulations cannot go beyond the terms and provisions of the basic law. Thus, in the Decision dated February 10, 2010, the Court held that Article 9 (2) of the Implementing Rules of the Local Government Code is null and void, because the exemption is not found in Section 461 of the Local Government Code. There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.

4. ID.; ID.; DOCTRINE OF OPERATIVE FACT; THE DOCTRINE RECOGNIZES THAT THE ACTUAL EXISTENCE OF A STATUTE PRIOR TO A DETERMINATION OF UNCONSTITUTIONALITY IS AN OPERATIVE FACT AND MAY HAVE CONSEQUENCES WHICH CANNOT ALWAYS BE IGNORED; EXPLAINED. — [T]he general rule applies that an unconstitutional law is void, and produces no legal effect. x x x [T]he doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. The said doctrine recognizes that the actual existence of a statute prior to a determination of unconstitutionality is an operative fact, and may have consequences which cannot always be ignored. The doctrine was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it in the case of ***Municipality of Malabang v. Benito***. In ***Municipality of Malabang v. Benito***, the Court ruled that Executive Order 386 creating the Municipality of Malabang is void, and respondent officials were permanently restrained from performing the duties and functions of their respective offices. Nevertheless, the Court stated there was no basis for respondent officials' apprehension that the invalidation of the executive order creating Balabagan would have the effect of unsettling many an act done in reliance upon the validity of the creation of that municipality, citing ***Chicot County Drainage District v. Baxter State Bank***, thus: x x x The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified. Therefore, based on the foregoing, any question on the validity of acts

done before the invalidation of R.A. No. 9355 may be raised before the courts.

5. **ID.; LOCAL GOVERNMENT CODE; CREATION OF PROVINCE; THE VALIDITY OF R.A. NO. 9355 CREATING THE PROVINCE OF DINAGAT ISLANDS FAILED TO COMPLY WITH THE CRITERIA PROVIDED FOR IN SECTION 461 OF THE LOCAL GOVERNMENT CODE; CLARIFIED. —** The validity of R.A. No. 9355 creating the province of Dinagat Islands depends on its compliance with Section 10, Article X of the Constitution x x x Although the political units directly affected by the creation of the Province of Dinagat Islands approved the creation of the said province, R.A. No. 9355 failed to comply with the criteria for the creation of the province contained in Section 461 of the Local Government Code; hence, it was declared unconstitutional. The Local Government Code took effect on January 1, 1992, so **19 years** have lapsed since its enactment. If the Legislature committed the "congressional oversight in Section 461 of R.A. No. 7160" as alleged by Justice Nachura, it would have amended Section 461, which is a function of Congress. Substantial "oversights" in the basic law, particularly as alleged with respect to Section 461 of R.A. No. 7160, cannot be corrected in the implementing rules thereof, as it is settled rule that the implementing rules of the basic law cannot go beyond the scope of the basic law. [I]t should be pointed out that a province is "composed of a cluster of municipalities, or municipalities and component cities," and, therefore, has a bigger land area than that of a municipality and a city, as provided by law. It is noted that the former Local Government Code (*Batas Pambansa Blg*. 337) did not provide for a required land area in the creation of a municipality and a city, but provided for a required land area in the creation of a province, which is 3,500 square kilometers, now lessened to 2,000 square kilometers in the present Local Government Code. If only the income matters in the creation of a province, then there would be no need for the distinctions in the population and land area requirements provided for a municipality, city and province in the present Local Government Code. It may be stated that unlike a municipality and a city, the territorial requirement of a province contained in Section 461 of the Local Government Code follows the general rule in Section 7, Chapter 2 (entitled *General Powers and Attributes of Local*

Government Units) of the same Code x x x. Moreover, the argument that Article 9(2) of the LGC-IRR amounts to an executive construction of the provisions, policies, and principles of R.A. No. 7160, entitled to great weight and respect, citing the case of ***Galarosa v. Valencia***, has already been ruled upon in the Decision dated February 10, 2010 x x x. Indeed, the policy of the State is that "the **territorial and political subdivisions of the State** shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals." However, it must stressed that in the creation of the territorial and political subdivisions of the State, the requirements provided by the Local Government Code must also be complied with, which R.A. No. 9355 failed to do.

6. **ID.; ID.; ID.; GENERAL WELFARE PROVISIONS; NOT APPLICABLE IN THE PROVISIONS FOR THE CREATION OF A LOCAL GOVERNMENT UNIT. —** General welfare is clarified in Section 16 of the Local Government Code x x x. The Local Government Code provides that it is "**[*t*]*he general welfare provisions in this Code which shall be liberally interpreted*** to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community." Nowhere is it stated therein that the provisions for the creation of a local government unit, the province in particular, should be liberally interpreted. Moreover, since the criteria for the creation of a province under the Local Government Code are clear, there is no room for interpretation, but only application. To reiterate, the constitutional basis for the creation of a province is laid down in Section 10, Article X of the Constitution, which provides that no province may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. The criteria for the creation of a province are found in Section 461 of the Local Government Code. Moreover, Section 6 of the Local Government Code provides that "[a] local government unit may be created xxx by law enacted by congress in the case of a province xxx subject to such limitations and requirements prescribed in this Code." Based on the criteria for the creation

of a province provided for in Section 461 of the Local Government, the Court found that R.A. No. 9355 creating the Province of Dinagat Islands failed to comply with the population or territorial requirement; hence, R.A. No. 9355 was declared unconstitutional.

7. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; THE DATE OF THE FINALITY OF JUDGMENT IS DEEMED TO BE THE DATE OF ITS ENTRY; APPLICATION IN CASE AT BAR. —** Although Entry of Judgment was made on October 5, 2010, it must be borne in mind that the Decision in this case became final and executory on May 18, 2010, as evidenced by the Entry of Judgment issued by the Clerk of Court. If the Court follows Section 2, Rule 36 of the Rules of Court, the date of finality of the judgment is deemed to be the date of its entry x x x. The amendment in Section 2 above makes finality and entry simultaneous by operation of law, and eliminates the confusion and guesswork whenever the parties could not have access, for one reason or another, to the Book of Entries of Judgments. It also avoids the usual problem where the physical act of writing out the entry is delayed by neglect or sloth. x x x As the decision in this case became final and executory on May 18, 2010, the decision is unalterable. In ***Gomez v. Correa**,* the Court held: It is settled that when a final judgment is executory, it becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries in which case there is no prejudice to any party, and where the judgment is void. To stress, the motion for reconsideration filed by movants-intervenors on the denial of the motion for intervention should have been denied since to grant the same would be tantamount to reopening a case which is already final. Worse, movants-intervenors are not even original parties to the present case and therefore are not in a position to file a motion to recall a judgment which is already final and executory.

APPEARANCES OF COUNSEL

Victor F. Bernal for petitioners.
Leonardo B. Palicte III for the House of Representatives.
Abayon Silva Salanatin & Associates, Mario P. Menil, and *Galang Jorvina Muñez & Associates Law Offices* for Gov. Geraldine B. Ecleo-Villaroman.
Edmundo L. Zerda for Gov. Robert Ace S. Barbers.
Yulo and Bello Law Offices for respondents.
Office of the Senate Legal Counsel for Senate of the Philippines.
Claudine B. Orocio-Isorena for movants-intervenors.

R E S O L U T I O N

NACHURA, *J.*:

For consideration of the Court is the Urgent Motion to Recall Entry of Judgment dated October 20, 2010 filed by Movant-Intervenors[1] dated and filed on October 29, 2010, praying that the Court (a) recall the entry of judgment, and (b) resolve their motion for reconsideration of the July 20, 2010 Resolution.

To provide a clear perspective of the instant motion, we present hereunder a brief background of the relevant antecedents—

On October 2, 2006, the President of the Republic approved into law Republic Act (R.A.) No. 9355 (An Act Creating the Province of Dinagat Islands).[2] On December 3, 2006, the Commission on Elections (COMELEC) conducted the mandatory plebiscite for the ratification of the creation of the province

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[1] Congressman Francisco T. Matugas (incumbent Congressman of the First Legislative District of Surigao del Norte), Hon. Sol T. Matugas, Hon. Arturo Carlos A. Egay, Jr. (incumbent Governor and Vice Governor, respectively, of the Province of Surigao del Norte), Hon. Simeon Vicente G. Castrence, Hon. Mamerto D. Galanida, Hon. Margarito M. Longos, and Hon. Cesar M. Bagundol (incumbent Board Members of the First Provincial District of Surigao del Norte).

[2] Passed by the House of Representatives and the Senate on August 28, 2006 and August 14, 2006, respectively.

under the Local Government Code (LGC).[3] The plebiscite yielded 69,943 affirmative votes and 63,502 negative votes.[4] With the approval of the people from both the mother province of Surigao del Norte and the Province of Dinagat Islands (Dinagat), the President appointed the interim set of provincial officials who took their oath of office on January 26, 2007. Later, during the May 14, 2007 synchronized elections, the Dinagatnons elected their new set of provincial officials who assumed office on July 1, 2007.[5]

On November 10, 2006, petitioners Rodolfo G. Navarro, Victor F. Bernal and Rene O. Medina, former political leaders of Surigao del Norte, filed before this Court a petition for *certiorari* and prohibition (G.R. No. 175158) challenging the constitutionality of R.A. No. 9355.[6] The Court dismissed the petition on technical grounds. Their motion for reconsideration was also denied.[7]

Undaunted, petitioners, as taxpayers and residents of the Province of Surigao del Norte, filed another petition for *certiorari*[8]

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[3] R.A. No. 7160, Sec. 10.

SECTION. 10. *Plebiscite Requirement*. — No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.

[4] *Rollo*, pp. 124-127.

[5] *Id.* at 143.

[6] *Rollo* (G.R. No. 175158), pp. 3-20.

[7] Per the November 28, 2006 Resolution, the Court dismissed the petition due to its defective or insufficient verification and certification of non-forum shopping and the failure of petitioners' counsel to indicate an updated Integrated Bar of the Philippines official receipt. In its February 13, 2007 Resolution, the Court dismissed the petition with finality. On April 11, 2007, an Entry of Judgment was issued. (*Id.* at 77A and 112.)

[8] *Rollo*, pp. 3-43.

seeking to nullify R.A. No. 9355 for being unconstitutional. They alleged that the creation of Dinagat as a new province, if uncorrected, would perpetuate an illegal act of Congress, and would unjustly deprive the people of Surigao del Norte of a large chunk of the provincial territory, Internal Revenue Allocation (IRA), and rich resources from the area. They pointed out that when the law was passed, Dinagat had a land area of 802.12 square kilometers only and a population of only 106,951, failing to comply with Section 10, Article X of the Constitution and of Section 461 of the LGC, on both counts, *viz.*—

Constitution, Article X – Local Government

Section 10. No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to the approval by a majority of the votes cast in a plebiscite in the political units directly affected.

LGC, Title IV, Chapter I

Section 461. ***Requisites for Creation.*** – (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) **a continuous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau;** or

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.**

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income. (Emphasis supplied.)

On February 10, 2010, the Court rendered its Decision[9] granting the petition.[10] The Decision declared R.A. No. 9355 unconstitutional for failure to comply with the requirements on population and land area in the creation of a province under the LGC. Consequently, it declared the proclamation of Dinagat and the election of its officials as null and void. The Decision likewise declared as null and void the provision on Article 9(2) of the Rules and Regulations Implementing the LGC (LGC-IRR), stating that, "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands" for being beyond the ambit of Article 461 of the LGC, inasmuch as such exemption is not expressly provided in the law.[11]

The Republic, represented by the Office of the Solicitor General, and Dinagat filed their respective motions for reconsideration of the Decision. In its Resolution[12] dated May 12, 2010,[13] the Court denied the said motions.[14]

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[9] *Id.* at 736-765.

[10] Penned by Associate Justice Diosdado M. Peralta, with Chief Justice Reynato S. Puno (now retired) and Associate Justices Antonio T. Carpio, Conchita Carpio Morales, Arturo D. Brion, Mariano C. Del Castillo, Martin S. Villarama, Jr., Jose Portugal Perez, and Jose Catral Mendoza, concurring.

[11] Dissented to by Associate Justice Antonio Eduardo B. Nachura, joined by Associate Justices Renato C. Corona (now Chief Justice), Presbitero J. Velasco, Jr., Teresita J. Leonardo-De Castro, Lucas P. Bersamin, and Roberto A. Abad.

[12] Penned by Associate Justice Diosdado M. Peralta, with Chief Justice Reynato S. Puno (now retired) and Associate Justices Antonio T. Carpio, Conchita Carpio-Morales, Arturo D. Brion, Mariano C. Del Castillo, Martin S. Villarama, Jr., and Jose Catral Mendoza, concurring.

[13] Dissented to by Associate Justice Jose Portugal Perez, joined by Associate Justices Renato C. Corona (now Chief Justice), Antonio Eduardo B. Nachura, Teresita J. Leonardo-De Castro, Lucas P. Bersamin, and Roberto A. Abad.

[14] *Rollo*, pp. 984-997.

Unperturbed, the Republic and Dinagat both filed their respective motions for leave of court to admit their second motions for reconsideration, accompanied by their second motions for reconsideration. These motions were eventually "noted without action" by this Court in its June 29, 2010 Resolution.[15]

Meanwhile, the movants-intervenors filed on June 18, 2010 a Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. They alleged that the COMELEC issued Resolution No. 8790, relevant to this case, which provides—

RESOLUTION NO. 8790

WHEREAS, Dinagat Islands, consisting of seven (7) municipalities, were previously components of the First Legislative District of the Province of Surigao del Norte. In December 2006 pursuant to Republic Act No. 9355, the Province of Dinagat Island[s] was created and its creation was ratified on 02 December 2006 in the Plebiscite for this purpose;

WHEREAS, as a province, Dinagat Islands was, for purposes of the May 10, 2010 National and Local Elections, allocated one (1) seat for Governor, one (1) seat for Vice Governor, one (1) for congressional seat, and ten (10) Sangguniang Panlalawigan seats pursuant to Resolution No. 8670 dated 16 September 2009;

WHEREAS, the Supreme Court in G.R. No. 180050 entitled "*Rodolfo Navarro, et al., vs. Executive Secretary Eduardo Ermita*, as representative of the President of the Philippines, et al." rendered a Decision, dated 10 February 2010, declaring Republic Act No. 9355 unconstitutional for failure to comply with the criteria for the creation of a province prescribed in Sec. 461 of the Local Government Code in relation to Sec. 10, Art. X, of the 1987 Constitution;

WHEREAS, respondents intend to file Motion[s] for Reconsideration on the above decision of the Supreme Court;

WHEREAS, the electoral data relative to the: (1) position for Member, House of Representatives representing the lone

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[15] *Id.* at 1153-1154.

congressional district of Dinagat Islands, (2) names of the candidates for the aforementioned position, (3) position for Governor, Dinagat Islands, (4) names of the candidates for the said position, (5) position of the Vice Governor, (6) the names of the candidates for the said position, (7) positions for the ten (10) Sangguniang Panlalawigan Members and, [8] all the names of the candidates for Sangguniang Panlalawigan Members, have already been configured into the system and can no longer be revised within the remaining period before the elections on May 10, 2010.

NOW, THEREFORE, with the current system configuration, and depending on whether the Decision of the Supreme Court in *Navarro vs. Ermita* is reconsidered or not, the Commission RESOLVED, as it hereby RESOLVES, to declare that:

a. If the Decision is reversed, there will be no problem since the current system configuration is in line with the reconsidered Decision, meaning that the Province of Dinagat Islands and the Province of Surigao del Norte remain as two (2) separate provinces;

b. If the Decision becomes final and executory before the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District, Surigao del Norte.

But because of the current system configuration, the ballots for the Province of Dinagat Islands will, for the positions of Member, House of Representatives, Governor, Vice Governor and Members, Sangguniang Panlalawigan, bear only the names of the candidates for the said positions.

Conversely, the ballots for the First Legislative District of Surigao del Norte, will, for the position of Governor, Vice Governor, Member, House of Representatives, First District of Surigao del Norte and Members, Sangguniang Panlalawigan, show only candidates for the said position. Likewise, the whole Province of Surigao del Norte, will, for the position of Governor and Vice Governor, bear only the names of the candidates for the said position[s].

Consequently, the voters of the Province of Dinagat Islands will not be able to vote for the candidates of Members, Sangguniang Panlalawigan, and Member, House [of] Representatives, First Legislative District, Surigao del Norte,

and candidates for Governor and Vice Governor for Surigao del Norte. Meanwhile, voters of the First Legislative District of Surigao del Norte, will not be able to vote for Members, Sangguniang Panlalawigan and Member, House of Representatives, Dinagat Islands. Also, the voters of the whole Province of Surigao del Norte, will not be able to vote for the Governor and Vice Governor, Dinagat Islands. Given this situation, the Commission will postpone the elections for Governor, Vice Governor, Member, House of Representatives, First Legislative District, Surigao del Norte, and Members, Sangguniang Panlalawigan, First Legislative District, Surigao del Norte, because the election will result in [a] failure to elect, since, in actuality, there are no candidates for Governor, Vice Governor, Members, Sangguniang Panlalawigan, First Legislative District, and Member, House of Representatives, First Legislative District (with Dinagat Islands) of Surigao del Norte.

c. <u>If the Decision becomes final and executory after the election,</u> the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte. The result of the election will have to be nullified for the same reasons given in Item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, Sangguniang Panlalawigan, First District, Surigao del Norte (with Dinagat Islands) will have to be conducted.

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SO ORDERED.

They further alleged that, because they are the duly elected officials of Surigao del Norte whose positions will be affected by the nullification of the election results in the event that the May 12, 2010 Resolution is not reversed, they have a legal interest in the instant case and would be directly affected by the declaration of nullity of R.A. No. 9355. Simply put, movants-intervenors' election to their respective offices would necessarily be annulled since Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del

Norte and a special election will have to be conducted for governor, vice governor, and House of Representatives member and Sangguniang Panlalawigan member for the First Legislative District of Surigao del Norte. Moreover, as residents of Surigao del Norte and as public servants representing the interests of their constituents, they have a clear and strong interest in the outcome of this case inasmuch as the reversion of Dinagat as part of the First Legislative District of Surigao del Norte will affect the latter province such that: (1) the whole administrative set-up of the province will have to be restructured; (2) the services of many employees will have to be terminated; (3) contracts will have to be invalidated; and (4) projects and other developments will have to be discontinued. In addition, they claim that their rights cannot be adequately pursued and protected in any other proceeding since their rights would be foreclosed if the May 12, 2010 Resolution would attain finality.

In their motion for reconsideration of the May 12, 2010 Resolution, movants-intervenors raised three (3) main arguments to challenge the above Resolution, namely: (1) that the passage of R.A. No. 9355 operates as an act of Congress amending Section 461 of the LGC; (2) that the exemption from territorial contiguity, when the intended province consists of two or more islands, includes the exemption from the application of the minimum land area requirement; and (3) that the Operative Fact Doctrine is applicable in the instant case.

In the Resolution dated July 20, 2010,[16] the Court denied the Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 on the ground that the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the Court, and that the appropriate time to file the said motion was before and not after the resolution of this case.

On September 7, 2010, movants-intervenors filed a Motion for Reconsideration of the July 20, 2010 Resolution, citing several

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[16] *Id.* at 1155- 1158.

rulings[17] of the Court, allowing intervention as an exception to Section 2, Rule 19 of the Rules of Court that it should be filed at any time before the rendition of judgment. They alleged that, prior to the May 10, 2010 elections, their legal interest in this case was not yet existent. They averred that prior to the May 10, 2010 elections, they were unaware of the proceedings in this case. Even for the sake of argument that they had notice of the pendency of the case, they pointed out that prior to the said elections, Sol T. Matugas was a simple resident of Surigao del Norte, Arturo Carlos A. Egay, Jr. was a member of the Sangguniang Panlalawigan of the Second District of Surigao del Norte, and Mamerto D. Galanida was the Municipal Mayor of Socorro, Surigao del Norte, and that, pursuant to COMELEC Resolution No. 8790, it was only after they were elected as Governor of Surigao del Norte, Vice Governor of Surigao del Norte and Sangguniang Panlalawigan Member of the First District of Surigao del Norte, respectively, that they became possessed with legal interest in this controversy.

On October 5, 2010, the Court issued an order for Entry of Judgment, stating that the decision in this case had become final and executory on May 18, 2010. Hence, the above motion.

At the outset, it must be clarified that this Resolution delves solely on the instant Urgent Motion to Recall Entry of Judgment of movants-intervenors, not on the second motions for reconsideration of the original parties, and neither on Dinagat's Urgent Omnibus Motion, which our esteemed colleague, Mr. Justice Arturo D. Brion considers as Dinagat's third motion for reconsideration. Inasmuch as the motions for leave to admit their respective motions for reconsideration of the May 12, 2010 Resolution and the aforesaid motions for reconsideration

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[17] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010, 613 SCRA 385; *Office of the Ombudsman v. Miedes, Sr.*, G.R. No. 176409, February 27, 2008, 547 SCRA 148; *Pinlac v. Court of Appeals,* 457 Phil. 527 (2003); *Mago v. Court of Appeals,* 363 Phil. 225 (1999); *Lim v. Pacquing*, G.R. No. 115044, January 27, 1995, 240 SCRA 649; *Tahanan Development Corporation v. Court of Appeals*, 203 Phil. 652 (1982); and *Director of Lands v. Court of Appeals*, 181 Phil. 432 (1979).

were already noted without action by the Court, there is no reason to treat Dinagat's Urgent Omnibus Motion differently. In relation to this, the Urgent Motion to Recall Entry of Judgment of movants-intervenors could not be considered as a second motion for reconsideration to warrant the application of Section 3, Rule 15 of the *Internal Rules of the Supreme Court*.[18] It should be noted that this motion prays for the recall of the entry of judgment and for the resolution of their motion for reconsideration of the July 20, 2010 Resolution which remained unresolved. The denial of their motion for leave to intervene and to admit motion for reconsideration of the May 12, 2010 Resolution did not rule on the merits of the motion for reconsideration of the May 12, 2010 Resolution, but only on the timeliness of the intended intervention. Their motion for reconsideration of this denial elaborated on movants-intervenors' interest in this case which existed only after judgment had been rendered. As such, their motion for intervention and their motion for reconsideration of the May 12, 2010 Resolution merely stand as an initial reconsideration of the said resolution.

With due deference to Mr. Justice Brion, there appears nothing in the records to support the claim that this was a ploy of respondents' legal tactician to reopen the case despite an entry of judgment. To be sure, it is actually COMELEC Resolution No. 8790 that set this controversy into motion anew. To reiterate, the pertinent portion of the Resolution reads:

c. **<u>If the Decision becomes final and executory after the election,</u>** the Province of Dinagat Islands will revert to its

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[18] 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 just 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.

> previous status as part of the First Legislative District of Surigao del Norte. The result of the election will have to be nullified for the same reasons given in Item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, Sangguniang Panlalawigan, First District, Surigao del Norte (with Dinagat Islands) will have to be conducted. (Emphasis supplied.)

Indeed, COMELEC Resolution No. 8790 spawned the peculiar circumstance of proper party interest for movants-intervenors only with the specter of the decision in the main case becoming final and executory. More importantly, if the intervention be not entertained, the movants-intervenors would be left with no other remedy as regards to the impending nullification of their election to their respective positions. Thus, to the Court's mind, there is an imperative to grant the Urgent Motion to Recall Entry of Judgment by movants-intervenors.

It should be remembered that this case was initiated upon the filing of the petition for *certiorari* way back on October 30, 2007. At that time, movants-intervenors had nothing at stake in the outcome of this case. While it may be argued that their interest in this case should have commenced upon the issuance of COMELEC Resolution No. 8790, it is obvious that their interest in this case then was more imaginary than real. This is because COMELEC Resolution No. 8790 provides that should the decision in this case attain finality prior to the May 10, 2010 elections, the election of the local government officials stated therein would only have to be postponed. Given such a scenario, movants-intervenors would not have suffered any injury or adverse effect with respect to the reversion of Dinagat as part of Surigao del Norte since they would simply have remained candidates for the respective positions they have vied for and to which they have been elected.

For a party to have *locus standi*, one must allege "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of

issues upon which the court so largely depends for illumination of difficult constitutional questions." Because constitutional cases are often public actions in which the relief sought is likely to affect other persons, a preliminary question frequently arises as to this interest in the constitutional question raised.[19]

It cannot be denied that movants-intervenors will suffer direct injury in the event their Urgent Motion to Recall Entry of Judgment dated October 29, 2010 is denied and their Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 is denied with finality. Indeed, they have sufficiently shown that they have a personal and substantial interest in the case, such that if the May 12, 2010 Resolution be not reconsidered, their election to their respective positions during the May 10, 2010 polls and its concomitant effects would all be nullified and be put to naught. Given their unique circumstances, movants-intervenors should not be left without any remedy before this Court simply because their interest in this case became manifest only after the case had already been decided. The consequences of such a decision would definitely work to their disadvantage, nay, to their utmost prejudice, without even them being parties to the dispute. Such decision would also violate their right to due process, a right that cries out for protection. Thus, it is imperative that the movants-intervenors be heard on the merits of their cause. We are not only a court of law, but also of justice and equity, such that our position and the dire repercussions of this controversy should be weighed on the scales of justice, rather than dismissed on account of mootness.

The "moot and academic" principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic, if: (1) there is a grave violation of the Constitution; (2) there is an exceptional character of the situation and the paramount public

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[19] *The Province of North Cotabato v. Republic*, G.R. No. 183591, October 14, 2008, 568 SCRA 402, citing *Firestone Ceramics, Inc. v. Court of Appeals*, 372 Phil. 401 (1999) and Vicente V. Mendoza, *JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS* 137 (2004).

interest is involved; (3) the constitutional issue raised requires formation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.[20] The second exception attends this case.

This Court had taken a liberal attitude in the case of *David v. Macapagal-Arroyo*,[21] where technicalities of procedure on *locus standi* were brushed aside, because the constitutional issues raised were of paramount public interest or of transcendental importance deserving the attention of the Court. Along parallel lines, the motion for intervention should be given due course since movants-intervenors have shown their substantial legal interest in the outcome of this case, even much more than petitioners themselves, and because of the novelty, gravity, and weight of the issues involved.

Undeniably, the motion for intervention and the motion for reconsideration of the May 12, 2010 Resolution of movants-intervenors is akin to the right to appeal the judgment of a case, which, though merely a statutory right that must comply with the requirements of the rules, is an essential part of our judicial system, such that courts should proceed with caution not to deprive a party of the right to question the judgment and its effects, and ensure that every party-litigant, including those who would be directly affected, would have the amplest opportunity for the proper and just disposition of their cause, freed from the constraints of technicalities.[22]

Verily, the Court had, on several occasions, sanctioned the recall entries of judgment in light of attendant extraordinary circumstances.[23] The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter

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[20] *David v. Macapagal-Arroyo,* G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[21] *Id.* at 223.

[22] See *Tan Tiac Chiong v. Hon. Rodrigo Cosico*, 434 Phil. 753 (2002); *People v. Hon. Chavez*, 411 Phil. 482 (2001).

[23] *Id.*

even that which this Court itself had already declared final.[24] In this case, the compelling concern is not only to afford the movants-intervenors the right to be heard since they would be adversely affected by the judgment in this case despite not being original parties thereto, but also to arrive at the correct interpretation of the provisions of the LGC with respect to the creation of local government units. In this manner, the thrust of the Constitution with respect to local autonomy and of the LGC with respect to decentralization and the attainment of national goals, as hereafter elucidated, will effectively be realized.

On the merits of the motion for intervention, after taking a long and intent look, the Court finds that the first and second arguments raised by movants-intervenors deserve affirmative consideration.

It must be borne in mind that the central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents. The criteria prescribed by the LGC, *i.e.*, income, population and land area, are all designed to accomplish these results. In this light, Congress, in its collective wisdom, has debated on the relative weight of each of these three criteria, placing emphasis on which of them should enjoy preferential consideration.

Without doubt, the primordial criterion in the creation of local government units, particularly of a province, is economic viability. This is the clear intent of the framers of the LGC. In this connection, the following excerpts from congressional debates are quoted hereunder—

HON. ALFELOR. Income is mandatory. We can even have this doubled because we thought…

CHAIRMAN CUENCO. In other words, the primordial consideration here is the economic viability of the new local government unit, the new province?

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[24] *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468, 492.

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HON. LAGUDA. The reason why we are willing to increase the income, double than the House version, because we also believe that economic viability is really a minimum. Land area and population are functions really of the viability of the area, because you have an income level which would be the trigger point for economic development, population will naturally increase because there will be an immigration. However, if you disallow the particular area from being converted into a province because of the population problems in the beginning, it will never be able to reach the point where it could become a province simply because it will never have the economic take off for it to trigger off that economic development.

Now, we're saying that maybe Fourteen Million Pesos is a floor area where it could pay for overhead and provide a minimum of basic services to the population. Over and above that, the provincial officials should be able to trigger off economic development which will attract immigration, which will attract new investments from the private sector. This is now the concern of the local officials. But if we are going to tie the hands of the proponents, simply by telling them, "Sorry, you are now at 150 thousand or 200 thousand," you will never be able to become a province because nobody wants to go to your place. Why? Because you never have any reason for economic viability.

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CHAIRMAN PIMENTEL. Okay, what about land area?

HON. LUMAUIG. 1,500 square kilometers

HON. ANGARA. *Walang problema 'yon*, in fact that's not very critical, '*yong* land area because…

CHAIRMAN PIMENTEL. Okay, ya, our, the Senate version is 3.5, 3,500 square meters, ah, square kilometers.

HON. LAGUDA. Ne, Ne. A province is constituted for the purpose of administrative efficiency and delivery of basic services.

CHAIRMAN PIMENTEL. Right.

HON. LAGUDA. Actually, when you come down to it, when government was instituted, there is only one central government and then everybody falls under that. But it was later on subdivided into provinces for purposes of administrative efficiency.

CHAIRMAN PIMENTEL. Okay.

HON. LAGUDA. Now, what we're seeing now is that the administrative efficiency is no longer there precisely because the land areas that we are giving to our governors is so wide that no one man can possibly administer all of the complex machineries that are needed.

Secondly, when you say "delivery of basic services," as pointed out by Cong. Alfelor, there are sections of the province which have never been visited by public officials, precisely because they don't have the time nor the energy anymore to do that because it's so wide. Now, by compressing the land area and by reducing the population requirement, we are, in effect, trying to follow the basic policy of why we are creating provinces, which is to deliver basic services and to make it more efficient in administration.

CHAIRMAN PIMENTEL. Yeah, that's correct, but on the assumption that the province is able to do it without being a burden to the national government. That's the assumption.

HON. LAGUDA. That's why we're going into the minimum income level. As we said, if we go on a minimum income level, then we say, "this is the trigger point at which this administration can take place."[25]

Also worthy of note are the requisites in the creation of a *barangay*, a municipality, a city, and a province as provided both in the LGC and the LGC-IRR, *viz.*—

For a *Barangay*:

***LGC*:** SEC. 386. *Requisites for Creation.* — (a) A *barangay* may be created out of a contiguous territory which has a population of at least two thousand (2,000) inhabitants as certified by the National Statistics Office except in cities and municipalities within Metro Manila and other metropolitan political subdivisions or in highly urbanized cities where such territory shall have a certified population of at least five thousand (5,000) inhabitants: Provided, That the creation thereof shall not reduce the population of the original *barangay* or *barangays* to less than the minimum requirement prescribed herein.

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[25] Bicameral Conference Committee Meeting of the Committee on Local Government, May 22, 1991, 4th Regular Session, pp. 57-67.

To enhance the delivery of basic services in the indigenous cultural communities, *barangays* may be created in such communities by an Act of Congress, notwithstanding the above requirement.

(b) The territorial jurisdiction of the new *barangay* shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.

(c) The governor or city mayor may prepare a consolidation plan for *barangays*, based on the criteria prescribed in this Section, within his territorial jurisdiction. The plan shall be submitted to the sangguniang panlalawigan or sangguniang panlungsod concerned for appropriate action. In the case of municipalities within the Metropolitan Manila area and other metropolitan political subdivisions, the *barangay* consolidation plan can be prepared and approved by the sangguniang bayan concerned.

LGC-IRR: ARTICLE 14. *Barangays*. — (a) Creation of *barangays* by the sangguniang panlalawigan shall require prior recommendation of the sangguniang bayan.

(b) New *barangays* in the municipalities within MMA shall be created only by Act of Congress, subject to the limitations and requirements prescribed in this Article.

(c) Notwithstanding the population requirement, a *barangay* may be created in the indigenous cultural communities by Act of Congress upon recommendation of the LGU or LGUs where the cultural community is located.

(d) A *barangay* shall not be created unless the following requisites are present:

(1) Population — which shall not be less than two thousand (2,000) inhabitants, except in municipalities and cities within MMA and other metropolitan political subdivisions as may be created by law, or in highly-urbanized cities where such territory shall have a population of at least five thousand (5,000) inhabitants, as certified by the NSO. The creation of a *barangay* shall not reduce the population of the original *barangay* or *barangays* to less than the prescribed minimum/

(2) Land Area — which must be contiguous, unless comprised by two (2) or more islands. The territorial jurisdiction of

a *barangay* sought to be created shall be properly identified by metes and bounds or by more or less permanent natural boundaries.

Municipality:

LGC: SEC. 442. *Requisites for Creation.* — (a) A municipality may be created if it has an average annual income, as certified by the provincial treasurer, or at least Two million five hundred thousand pesos (₱2,500,000.00) for the last two (2) consecutive years based on the 1991 constant prices; a population of at least twenty-five thousand (25,000) inhabitants as certified by the National Statistics Office; and a contiguous territory of at least fifty (50) square kilometers as certified by the Lands Management Bureau: Provided, That the creation thereof shall not reduce the land area, population or income of the original municipality or municipalities at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds. **The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands.** The territory need not be contiguous if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund of the municipality concerned, exclusive of special funds, transfers and non-recurring income.

(d) Municipalities existing as of the date of effectivity of this Code shall continue to exist and operate as such. Existing municipal districts organized pursuant to presidential issuances or executive orders and which have their respective set of elective municipal officials holding office at the time of the effectivity of this Code shall henceforth be considered regular municipalities.

LGC-IRR: ARTICLE 13. Municipalities. — (a) Requisites for Creation — A municipality shall not be created unless the following requisites are present:

(i) Income – An average annual income of not less than Two Million Five Hundred Thousand Pesos (₱2,500,000.00), for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by the provincial treasurer. The average annual income shall include the

income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income;

(ii) Population – which shall not be less than twenty five thousand (25,000) inhabitants, as certified by NSO; and

(iii) Land area – which must be contiguous with an area of at least fifty (50) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands. **The requirement on land area shall not apply where the proposed municipality is composed of one (1) or more islands.** The territorial jurisdiction of a municipality sought to be created shall be properly identified by metes and bounds.

The creation of a new municipality shall not reduce the land area, population, and income of the original LGU or LGUs at the time of said creation to less than the prescribed minimum requirements. All expenses incidental to the creation shall be borne by the petitioners.

City:

<u>LGC:</u> SEC. 450. *Requisites for Creation.* — (a) A municipality or a cluster of *barangays* may be converted into a component city if it has an average annual income, as certified by the Department of Finance, of at least Twenty million pesos (₱20,000,000.00) for the last two (2) consecutive years based on 1991 constant prices, and if it has either of the following requisities:

(i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Lands Management Bureau; or,

(ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office: Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. **The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands.** The territory need not be contiguous if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income.

LGC-IRR: ARTICLE 11. Cities. – (a) Requisites for creation — A city shall not be created unless the following requisites on income and either population or land area are present:

(1) Income — An average annual income of not less than Twenty Million Pesos (₱20,000,000.00), for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income; and

(2) Population or land area — Population which shall not be less than one hundred fifty thousand (150,000) inhabitants, as certified by the NSO; or land area which must be contiguous with an area of at least one hundred (100) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. **The land area requirement shall not apply where the proposed city is composed of one (1) or more islands.** The territorial jurisdiction of a city sought to be created shall be properly identified by metes and bounds.

The creation of a new city shall not reduce the land area, population, and income of the original LGU or LGUs at the time of said creation to less than the prescribed minimum requirements. All expenses incidental to the creation shall be borne by the petitioners.

Provinces:

LGC: SEC. 461. *Requisites for Creation.* — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 prices and either of the following requisites:

(i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or,

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.

LGC-IRR: ARTICLE 9. Provinces. — (a) Requisites for creation — A province shall not be created unless the following requisites on income and either population or land area are present:

(1) Income — An average annual income of not less than Twenty Million pesos (₱20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and non-recurring income; and

(2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. **The land area requirement shall not apply where the proposed province is composed of one (1) or more islands.** The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.

The creation of a new province shall not reduce the land area, population, and income of the original LGU or LGUs at the time of said creation to less than the prescribed minimum requirements.

All expenses incidental to the creation shall be borne by the petitioners. (Emphasis supplied.)

It bears scrupulous notice that from the above cited provisions, with respect to the creation of *barangays*, land area is not a requisite indicator of viability. However, with respect to the creation of municipalities, component cities, and provinces, the three (3) indicators of viability and projected capacity to provide services, *i.e.*, income, population, and land area, are provided for.

But it must be pointed out that when the local government unit to be created consists of one (1) or more islands, it is exempt from the land area requirement as expressly provided in Section 442 and Section 450 of the LGC if the local government unit to be created is a municipality or a component city, respectively. This exemption is absent in the enumeration of the requisites for the creation of a province under Section 461 of the LGC, although it is expressly stated under Article 9(2) of the LGC-IRR.

There appears neither rhyme nor reason why this exemption should apply to cities and municipalities, but not to provinces. In fact, considering the physical configuration of the Philippine archipelago, there is a greater likelihood that islands or group of islands would form part of the land area of a newly-created province than in most cities or municipalities. It is, therefore, logical to infer that the genuine legislative policy decision was expressed in Section 442 (for municipalities) and Section 450 (for component cities) of the LGC, but was inadvertently omitted in Section 461 (for provinces). Thus, when the exemption was expressly provided in Article 9(2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Section 461 of the LGC – and to reflect the true legislative intent. It would, then, be in order for the Court to uphold the validity of Article 9(2) of the LGC-IRR.

This interpretation finds merit when we consider the basic policy considerations underpinning the principle of local autonomy.

Section 2 of the LGC, of which paragraph (a) is pertinent to this case, provides—

Sec. 2. *Declaration of Policy.* — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

This declaration of policy is echoed in Article 3(a) of the LGC-IRR[26] and in the Whereas clauses of Administrative Order No. 270,[27] which read—

WHEREAS, Section 25, Article II of the Constitution mandates that the State shall ensure the autonomy of local governments;

WHEREAS, pursuant to this declared policy, Republic Act No. 7160, otherwise known as the Local Government Code of 1991, affirms, among others, that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals;

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[26] ARTICLE 3. Declaration of Policy. — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units (LGUs) shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the LGUs.

[27] Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991.

WHEREAS, Section 533 of the Local Government Code of 1991 requires the President to convene an Oversight Committee for the purpose of formulating and issuing the appropriate rules and regulations necessary for the efficient and effective implementation of all the provisions of the said Code; and

WHEREAS, the Oversight Committee, after due deliberations and consultations with all the concerned sectors of society and consideration of the operative principles of local autonomy as provided in the Local Government Code of 1991, has completed the formulation of the implementing rules and regulations: x x x

Consistent with the declared policy to provide local government units genuine and meaningful local autonomy, contiguity and minimum land area requirements for prospective local government units should be liberally construed in order to achieve the desired results. The strict interpretation adopted by the February 10, 2010 Decision could prove to be counter-productive, if not outright absurd, awkward, and impractical. Picture an intended province that consists of several municipalities and component cities which, in themselves, also consist of islands. The component cities and municipalities which consist of islands are exempt from the minimum land area requirement, pursuant to Sections 450 and 442, respectively, of the LGC. Yet, the province would be made to comply with the minimum land area criterion of 2,000 square kilometers, even if it consists of several islands. This would mean that Congress has opted to assign a distinctive preference to create a province with contiguous land area over one composed of islands — and negate the greater imperative of development of self-reliant communities, rural progress, and the delivery of basic services to the constituency. This preferential option would prove more difficult and burdensome if the 2,000-square-kilometer territory of a province is scattered because the islands are separated by bodies of water, as compared to one with a contiguous land mass.

Moreover, such a very restrictive construction could trench on the equal protection clause, as it actually defeats the purpose of local autonomy and decentralization as enshrined in the Constitution. Hence, the land area requirement should be read together with territorial contiguity.

Another look at the transcript of the deliberations of Congress should prove enlightening:

CHAIRMAN ALFELOR. Can we give time to Congressman Chiongbian,[28] with respect to his…

CHAIRMAN LINA. Okay.

HON. CHIONGBIAN. At the outset, Chairman Lina, we would like to apprise the distinguished Senator about the action taken by the House, on House Bill No. 7166. This was passed about two years ago and has been pending in the Senate for consideration. This is a bill that I am not the only one involved, including our distinguished Chairman here. But then we did want to sponsor the bill, being the Chairman then of the Local Government.

So, I took the cudgels for the rest of the Congressmen, who were more or less interested in the creation of the new provinces, because of the vastness of the areas that were involved.

At any rate, this bill was passed by the House unanimously without any objection. And as I have said a while ago, that this has been pending in the Senate for the last two years. And Sen. Pimentel himself was just in South Cotabato and he delivered a speech that he will support this bill, and he says, that he will incorporate this in the Local Government Code, which I have in writing from him. I showed you the letter that he wrote, and naturally, we in the House got hold of the Senate version. It becomes an impossibility for the whole Philippines to create a new province, and that is quite the concern of the respective Congressmen.

Now, insofar as the constitutional provision is concerned, there is nothing to stop the mother province from voting against the bill, if a province is going to be created.

So, we are talking about devolution of powers here. Why is the province not willing to create another province, when it can be justified. Even Speaker Mitra says, what will happen to Palawan? We won't have one million people there, and if you look at Palawan, there will be about three or four provinces that will comprise that island. So, the development will be hampered.

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[28] Congressman Chiongbian is one of the sponsors of House Bill No. 34061, the House of Representatives version of the proposed Local Government Code.

Now, I would like to read into the record the letter of Sen. Pimentel, dated November 2, 1989. This was practically about a year after 7166 was approved by the House, House Bill 7166.

On November 2, 1989, the Senator wrote me:

> "Dear Congressman Chiongbian:
>
> We are in receipt of your letter of 17 October. Please be informed that your House No. 7166 was incorporated in the proposed Local Government Code, Senate Bill No. 155, which is pending for second reading.
>
> Thank you and warm regards.
>
> Very truly yours,"

That is the very context of the letter of the Senator, and we are quite surprised that the Senate has adopted another position.

So, we would like — because this is a unanimously approved bill in the House, that's the only bill that is involving the present Local Government Code that we are practically considering; and this will be a slap on the House, if we do not approve it, as approved by the lower House. This can be [an] irritant in the approval of the Conference Committee Report. And I just want to manifest that insofar as the creation of the province, not only in my province, but the other provinces. That the mother province will participate in the plebiscite, they can defeat the province, let's say, on the basis of the result, the province cannot be created if they lose in the plebiscite, and I don't see why, we should put this stringent conditions to the private people of the devolution that they are seeking.

So, Mr. Senator, I think we should consider the situation seriously, because, this is an approved version of the House, and I will not be the one to raise up and question the Conference Committee Report, but the rest of the House that are interested in this bill. And they have been approaching the Speaker about this. So, the Speaker reminded me to make sure that it takes the cudgel of the House approved version.

So, that's all what I can say, Mr. Senator, and I don't believe that it is not, because it's the wish of the House, but because the mother province will participate anyhow, you vote them down; and that is provided for in the Constitution. As a matter of fact, I have seen the amendment with regards to the creation of the city to be urbanized,

subject to the plebiscite. And why should we not allow that to happen in the provinces! In other words, we don't want the people who wants to create a new province, as if they are left in the devolution of powers, when they feel that they are far away from civilization.

Now, I am not talking about other provinces, because I am unaware, not aware of their situation. But the province of South Cotabato has a very unique geographical territorial conglomerations. One side is in the other side of the Bay, of Sarangani Bay. The capital town is in the North; while these other municipalities are in the East and in the West. And if they have to travel from the last town in the eastern part of the province, it is about one hundred forty kilometers to the capital town. And from the West side, it is the same distance. And from the North side, it is about one hundred kilometers. So that is the problem there. And besides, they have enough resources and I feel that, not because I am interested in the province, I am after their welfare in the future. Who am I to dictate on those people? I have no interest but then I am looking at the future development of these areas.

As a matter of fact, if I am in politics, it's incidental; I do not need to be there, but I can foresee what the creation of a new province will bring to these people. It will bring them prosperity; it will bring them more income, and it will encourage even foreign investors. Like the PAP now, they are concentrating in South Cotabato, especially in the City of General Santos and the neighboring municipalities, and they are quite interested and even the AID people are asking me, "What is holding the creation of a new province when practically you need it?" It's not 20 or 30 kilometers from the capital town; it's about 140 kilometers. And imagine those people have to travel that far and our road is not like Metropolitan Manila. That is as far as from here to Tarlac. And there are municipalities there that are just one municipality is bigger than the province of La Union. They have the income. Of course, they don't have the population because that's a part of the land of promise and people from Luzon are migrating everyday because they feel that there are more opportunities here.

So, by creating the new provinces, not only in my case, in the other cases, it will enhance the development of the Philippines, not because I am interested in my province. Well, as far as I am concerned, you know, I am in the twilight years of my life to serve and I would like to serve my people well. No personal or political interest here.

I hope the distinguished Chairman of the Committee will appreciate the House Bill 7166, which the House has already approved because we don't want them to throw the Conference Committee Report after we have worked that the house Bill has been, you know, drawn over board and not even considered by the Senate. And on top of that, we are considering a bill that has not yet been passed. So I hope the Senator will take that into account.

Thank you for giving me this time to explain.

CHAIRMAN LINA. Thank you very much, Congressman James. We will look into the legislative history of the Senate version on this matter of creation of provinces. I am sure there was an amendment. As I said, I'll look into it. Maybe the House version was incorporated *in toto*, but maybe during the discussion, their amendments were introduced and, therefore, Senator Pimentel could not hold on to the original version and as a result new criteria were introduced.

But because of the manifestation that you just made, we will definitely, when we reach a book, Title IV, on the matter of provinces, we will look at it sympathetically from your end so that the objective that you want [to] achieve can be realized. So we will look at it with sympathy. We will review our position on the matter, how we arrived at the Senate version and we will adopt an open mind definitely when we come into it.

CHAIRMAN ALFELOR. *Kanino 'yan?*

CHAIRMAN LINA. Book III.

CHAIRMAN ALFELOR. Title?

CHAIRMAN LINA. Title IV.

CHAIRMAN ALFELOR. I have been pondering on the case of James, especially on economic stimulation of a certain area. Like our case, because I put myself on our province, our province is quite very big. It's composed of four (4) congressional districts and I feel it should be five now. But during the Batasan time, four of us talked and conversed proposing to divide the province into two.

There are areas then, when since time immemorial, very few governors ever tread on those areas. That is, maybe you're acquainted with the Bondoc Peninsula of Quezon, fronting that is Ragay Gulf. From Ragay there is a long stretch of coastal area. From Albay

going to Ragay, very few governors ever tread [there] before, even today. That area now is infested with NPA. That is the area of Congressman Andaya.

Now, we thought that in order to stimulate growth, maybe provincial aid can be extended to these areas. With a big or a large area of a province, a certain administrator or provincial governor definitely will have no sufficient time. For me, if we really would like to stimulate growth, I believe that an area where there is physical or geographical impossibilities, where administrators can penetrate, I think we have to create certain provisions in the law where maybe we can treat it with special considerations.

Now, we went over the graduate scale of the Philippine Local Government Data as far as provinces are concerned. It is very surprising that there are provinces here which only composed of six municipalities, eight municipalities, seven municipalities. Like in Cagayan, Tuguegarao, there are six municipalities. Ah, excuse me, Batanes.

CHAIRMAN LINA. Will you look at the case of — how many municipalities are there in Batanes province?

CHAIRMAN ALFELOR. Batanes is only six.

CHAIRMAN LINA. Six town. Siquijor?

CHAIRMAN ALFELOR. Siquijor. It is region?

CHAIRMAN LINA. Seven.

CHAIRMAN ALFELOR. Seven. *Anim.*

CHAIRMAN LINA. Six also.

CHAIRMAN ALFELOR. Six also.

CHAIRMAN LINA. It seems with a minimum number of towns?

CHAIRMAN ALFELOR. The population of Siquijor is only 70 thousand, not even one congressional district. But *tumaas* in 1982. Camiguin, that is Region 9. *Wala dito. Nagtataka nga ako ngayon.*

CHAIRMAN LINA. Camiguin, Camiguin.

CHAIRMAN ALFELOR. That is region? Camiguin has five municipalities, with a population of 63 thousand. But we do not hold it against the province because maybe that's one stimulant where

growth can grow, can start. The land area for Camiguin is only 229 square kilometers. So if we hard fast on requirements of, we set a minimum for every province, *palagay ko* we just leave it to legislation, *eh*. Anyway, the Constitution is very clear that in case we would like to divide, we submit it to a plebiscite. *Pabayaan natin ang tao. Kung maglalagay tayo ng set ng minimum, tila yata mahihirapan tayo, eh*. Because what is really the thrust of the Local Government Code? Growth. To devolve powers in order for the community to have its own idea how they will stimulate growth in their respective areas.

So, in every geographical condition, *mayroon sariling* id[i]osyncracies *eh*, we cannot make a generalization.

CHAIRMAN LINA. Will the creation of a province, carved out of the existing province because of some geographical id[i]osyncracies, as you called it, stimulate the economic growth in the area or will substantial aid coming from the national government to a particular area, say, to a municipality, achieve the same purpose?

CHAIRMAN ALFELOR. *Ano tayo dito sa budget*. All right, here is a province. Usually, *tinitingnan lang yun, provision eh, hindi na yung composition eh*. You are entitled to, say, 20% of the area.

There's a province of Camarines Sur which have the same share with that of Camiguin and Siquijor, but Camiguin is composed only of five municipalities; in Siquijor, it's composed of six, but the share of Siquijor is the same share with that of the province of Camarines Sur, having a bigger area, very much bigger.

That is the budget in process.

CHAIRMAN LINA. Well, as I said, we are going to consider this very seriously and even with sympathy because of the explanation given and we will study this very carefully.[29]

The matters raised during the said Bicameral Conference Committee meeting clearly show the manifest intention of Congress to promote development in the previously underdeveloped and uninhabited land areas by allowing them to directly share in the allocation of funds under the national budget. It should

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[29] Bicameral Conference Committee on Local Government (Book III), March 13, 1991, pp. 18-28.

be remembered that, under Sections 284 and 285 of the LGC, the IRA is given back to local governments, and the sharing is based on land area, population, and local revenue.[30]

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[30] Section 284. *Allotment of Internal Revenue Taxes*. — Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:

(a) On the first year of the effectivity of this Code, thirty percent (30%);
(b) On the second year, thirty-five percent (35%); and
(c) On the third year and thereafter, forty percent (40%):

Provided, That in the event that the National Government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of the Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "*liga*," to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: *Provided, further*, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

Section 285. *Allocation to Local Government Units.* — The share of local government units in the internal revenue allotment shall be allocated in the following manner:

(a) Provinces – Twenty-three percent (23%);
(b) Cities – Twenty-three percent (23%);
(c) Municipalities – Thirty-four percent (34%); and
(d) *Barangays* – Twenty percent (20%):

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population – Fifty percent (50%);
(b) Land Area – Twenty-five percent (25%) and
(c) Equal Sharing – Twenty-five percent (25%):

Provided, further, That the share of each *barangay* with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand pesos (₱80,000.00) per annum chargeable against the twenty percent (20%) share of the *barangay* from the internal revenue allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:
    (1) Population – Forty percent (40%); and
    (2) Equal Sharing – Sixty percent (60%)

Elementary is the principle that, if the literal application of the law results in absurdity, impossibility, or injustice, then courts may resort to extrinsic aids of statutory construction, such as the legislative history of the law,[31] or may consider the implementing rules and regulations and pertinent executive issuances in the nature of executive and/or legislative construction. Pursuant to this principle, Article 9(2) of the LGC-IRR should be deemed incorporated in the basic law, the LGC.

It is well to remember that the LGC-IRR was formulated by the Oversight Committee consisting of members of both the Executive and Legislative departments, pursuant to Section 533[32]

(b) On the second year:
  (1) Population – Fifty percent (50%); and
  (2) Equal Sharing – Fifty percent (50%)
(c) On the third year and thereafter:
  (1) Population – Sixty percent (60%); and
  (2) Equal Sharing – Forty percent (40%):

Provided, finally, That the financial requirements of *barangays* created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

[31] *Commissioner of Internal Revenue v. Solidbank Corp.*, 462 Phil. 96, 129-131, 416 SCRA 436 (2003); *Republic v. Court of Appeals*, 359 Phil. 530, 559; 299 SCRA 199 (1998).

[32] Sec. 533. *Formulation of Implementing Rules and Regulations.*— (a) Within one (1) month after the approval of this Code, the President shall convene the Oversight Committee as herein provided for. **The said Committee shall formulate and issue the appropriate rules and regulations necessary for the efficient and effective implementation of any and all provisions of this Code, thereby ensuring compliance with the principles of local autonomy as defined under the Constitution.**

(b) The Committee shall be composed of the following:

(1) The Executive Secretary, who shall be the Chairman;

(2) **Three (3) members of the Senate to be appointed by the President of the Senate, to include the Chairman of the Committee on Local Government;**

(3) **Three (3) members of the House of Representatives to be appointed by the Speaker, to include the Chairman of the Committee on Local Government;**

(4) The Cabinet, represented by the following:
  (i) Secretary of the Interior and Local Government;

of the LGC. As Section 533 provides, the Oversight Committee shall formulate and issue the **appropriate rules and regulations necessary for the efficient and effective implementation of any and all provisions of this Code, thereby ensuring compliance with the principles of local autonomy as defined under the Constitution.** It was also mandated by the Constitution that a local government code shall be enacted by Congress, to wit—

Section 3. The Congress shall enact a local government code which shall provide for **a more responsive and accountable local government structure instituted through a system of decentralization** with effective mechanisms of recall, initiative, and referendum, **allocate among the different local government units their powers, responsibilities, and resources,** and provide

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(ii) Secretary of Finance;
(iii) Secretary of Budget and Management; and
(5) One (1) representative from each of the following;
(i) The League of Provinces;
(ii) The League of Cities;
(iii) The League of Municipalities; and
(iv) The Liga ng mga *Barangay*.

(c) The Committee shall submit its report and recommendation to the President within two (2) months after its organization. If the President fails to act within thirty (30) days from receipt thereof, the recommendation of the Oversight Committee shall be deemed approved. Thereafter, the Committee shall supervise the transfer of such powers and functions mandated under this Code to the local government units, together with the corresponding personnel, properties, assets and liabilities of the offices or agencies concerned, with the least possible disruptions to existing programs and projects. The Committee shall likewise recommend the corresponding appropriations necessary to effect the said transfer.

For this purpose, the services of a technical staff shall be enlisted from among the qualified employees of Congress, the government offices, and the leagues constituting the Committee.

(d) The funding requirements and the secretariat of the Committee shall be provided by the Office of the Executive Secretary.

(e) **The sum of Five million pesos (₱5,000,000.00), which shall be charged against the Contingent Fund, is hereby allotted to the Committee to fund the undertaking of an information campaign on this Code.** The Committee shall formulate the guidelines governing the conduct of said campaign, and shall determine the national agencies or offices to be involved for this purpose. (Emphasis supplied.)

for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, **and all other matters relating to the organization and operation of the local units.** (Emphasis supplied.)

These State policies are the very reason for the enactment of the LGC, with the view to attain decentralization and countryside development. Congress saw that the old LGC, Batas Pambansa Bilang 337, had to be replaced with a new law, now the LGC of 1991, which is more dynamic and cognizant of the needs of the Philippines as an archipelagic country. This accounts for the exemption from the land area requirement of local government units composed of one or more islands, as expressly stated under Sections 442 and 450 of the LGC, with respect to the creation of municipalities and cities, but inadvertently omitted from Section 461 with respect to the creation of provinces. Hence, the void or missing detail was filled in by the Oversight Committee in the LGC-IRR.

With three (3) members each from both the Senate and the House of Representatives, particularly the chairpersons of their respective Committees on Local Government, it cannot be gainsaid that the inclusion by the Oversight Committee of the exemption from the land area requirement with respect to the creation of provinces consisting of one (1) or more islands was intended by Congress, but unfortunately not expressly stated in Section 461 of the LGC, and this intent was echoed through an express provision in the LGC-IRR. To be sure, the Oversight Committee did not just arbitrarily and whimsically insert such an exemption in Article 9(2) of the LGC-IRR. The Oversight Committee evidently conducted due deliberation and consultations with all the concerned sectors of society and considered the operative principles of local autonomy as provided in the LGC when the IRR was formulated.[33] Undoubtedly, this amounts

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[33] As found in the Whereas clauses of Administrative Order No. 270 prescribing the Implementing Rules and Regulations of the Local Government Code of 1991, *viz.*:

WHEREAS, the Oversight Committee, **after due deliberations and consultations with all the concerned sectors of society and consideration**

not only to an executive construction, entitled to great weight and respect from this Court,[34] but to legislative construction as well, especially with the inclusion of representatives from the four leagues of local government units as members of the Oversight Committee.

With the formulation of the LGC-IRR, which amounted to both executive and legislative construction of the LGC, the many details to implement the LGC had already been put in place, which Congress understood to be impractical and not too urgent to immediately translate into direct amendments to the LGC. But Congress, recognizing the capacity and viability of Dinagat to become a full-fledged province, enacted R.A. No. 9355, following the exemption from the land area requirement, which, with respect to the creation of provinces, can only be found as an express provision in the LGC-IRR. In effect, pursuant to its plenary legislative powers, Congress breathed flesh and blood into that exemption in Article 9(2) of the LGC-IRR and transformed it into law when it enacted R.A. No. 9355 creating the Island Province of Dinagat.

Further, the bill that eventually became R.A. No. 9355 was filed and favorably voted upon in both Chambers of Congress. Such acts of both Chambers of Congress definitively show the clear legislative intent to incorporate into the LGC that exemption from the land area requirement, with respect to the creation of a province when it consists of one or more islands, as expressly provided only in the LGC-IRR. Thereby, and by necessity, the LGC was amended by way of the enactment of R.A. No. 9355.

What is more, the land area, while considered as an indicator of viability of a local government unit, is not conclusive in showing that Dinagat cannot become a province, taking into account its average annual income of ₱82,696,433.23 at the time of its

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of the operative principles of local autonomy as provided in the Local Government Code of 1991, has completed the formulation of the implementing rules and regulations. (Emphasis supplied.)

[34] *Galarosa v. Valencia*, G.R. No. 109455, November 11, 1993, 227 SCRA 728.

creation, as certified by the Bureau of Local Government Finance, which is four times more than the minimum requirement of ₱20,000,000.00 for the creation of a province. The delivery of basic services to its constituents has been proven possible and sustainable. Rather than looking at the results of the plebiscite and the May 10, 2010 elections as mere *fait accompli* circumstances which cannot operate in favor of Dinagat's existence as a province, they must be seen from the perspective that Dinagat is ready and capable of becoming a province. This Court should not be instrumental in stunting such capacity. As we have held in *League of Cities of the Philippines v. Commission on Elections*[35] —

> *Ratio legis est anima.* The spirit rather than the letter of the law. A statute must be read according to its spirit or intent, for what is within the spirit is within the statute although it is not within its letter, and that which is within the letter but not within the spirit is not within the statute. Put a bit differently, that which is within the intent of the lawmaker is as much within the statute as if within the letter, and that which is within the letter of the statute is not within the statute unless within the intent of the lawmakers. Withal, courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators.
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> So as it is exhorted to pass on a challenge against the validity of an act of Congress, a co-equal branch of government, it behooves the Court to have at once one principle in mind: the presumption of constitutionality of statutes. This presumption finds its roots in the tri-partite system of government and the corollary separation of powers, which enjoins the three great departments of the government to accord a becoming courtesy for each other's acts, and not to interfere inordinately with the exercise by one of its official functions. Towards this end, courts ought to reject assaults against the validity of statutes, barring of course their clear unconstitutionality. To doubt is to sustain, the theory in context being that the law is the product of earnest studies by Congress to ensure that no constitutional prescription or concept is infringed. Consequently, before a law duly challenged is nullified, an unequivocal breach of, or a clear

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[35] G.R. Nos. 176951, 177499, and 178056, December 21, 2009, 608 SCRA 636, 644-645.

conflict with, the Constitution, not merely a doubtful or argumentative one, must be demonstrated in such a manner as to leave no doubt in the mind of the Court.

WHEREFORE, the Court resolved to:

1. *GRANT* the Urgent Motion to Recall Entry of Judgment by movants-intervenors, dated and filed on October 29, 2010;

2. *RECONSIDER* and *SET ASIDE* the July 20, 2010 Resolution, and *GRANT* the Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated July 20, 2010;

3. *GRANT* the Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. The May 12, 2010 Resolution is *RECONSIDERED* and *SET ASIDE*. The provision in Article 9(2) of the Rules and Regulations Implementing the Local Government Code of 1991 stating, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared *VALID***.** Accordingly, Republic Act No. 9355 (An Act Creating the Province of Dinagat Islands) is declared as *VALID* and *CONSTITUTIONAL*, and the proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared *VALID*; and

4. **The petition is** *DISMISSED*.

No pronouncement as to costs.

SO ORDERED.

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

Del Castillo and Mendoza, JJ., see concurring opinions subject also to Internal Rules of the S.C.

Abad, *J*., see concurring opinion.

Carpio, J., joins the dissenting opinions of Justice Diosdado Peralta and Justice Brion and reserves the right to write a separate dissenting opinion.

Carpio Morales, J., as she joins *J*. Brion's dissent, she maintains her original vote, hence, she dissents.

Brion and *Peralta, JJ.,* see dissenting opinions.

Villarama, Jr., J., see dissenting opinion of *J*. Peralta, he joins it.

Sereno, J., dissents and joins *J*. Peralta in his opinion. She also joins *J*. Brion in his dissent.

CONCURRING OPINION

DEL CASTILLO, *J*.:

> Great cases, like hard cases, make bad law. For great cases are called great not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.
>
> *Justice Oliver Wendell Holmes*
> *Northern Securities Co. v. United States*[1]

> On the abstract principles which govern courts in construing legislative acts, no difference of opinion can exist. It is only in the application of those principles that the difference discovers itself.
>
> *Chief Justice John Marshall*
> *United States v. Fisher*[2]

Considering the circumstances which supervened after the promulgation of the Decision on February 10, 2010 and Resolution dated May 12, 2010, I find myself reconsidering my previous

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[1] 193 U.S. 197, 400-411 (1904) (Holmes, J. dissenting).

[2] 6 U.S. 358 (1805).

position. Mr. Justice Antonio Eduardo B. Nachura has himself identified factors not previously considered by this Court, which, in my view, warrant a reversal of our previous rulings.

The case before us concerns the proper interpretation of Section 461 of Republic Act (RA) No. 7160, also known as the Local Government Code (LGC), which prescribes the criteria for the creation of a province as follows:

SEC. 461. *Requisites for Creation.* — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and <u>either</u> of the following requisites:

(i) a contiguous territory of at least two thousand (2,000) square kilometers as certified by the Lands Management Bureau; or

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.[3] (Underscoring supplied)

To implement the provisions of the LGC, the Oversight Committee (created pursuant to Sec. 533 of the LGC) formulated

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[3] Article X, Section 10 of the Constitution also provides that "[n]o province, city, municipality, or *barangay* may be created, divided, merged, abolished or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected."

the Implementing Rules and Regulations to carry out the provisions of the law. Article 9 of said Rules and Regulations provides:

> Art. 9 Provinces — (a) *Requisites for Creation.* — A province shall not be created unless the following requisites on income and either population or land area are present:
>
> (i) Income — An average annual income of not less than Twenty million pesos (₱20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by the DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and non-recurring income; and
>
> (ii) Population or land area — Population shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. The land area requirement shall not apply where the proposed province is composed of one (1) or more islands. The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.

Since our May 12, 2010 ruling (which denied respondents' respective Motions for Reconsideration), the Office of the Solicitor General (representing the Republic of the Philippines) and Gov. Geraldine Ecleo Villaroman (representing the new Province of the Dinagat Islands), each sought leave to file a Second Motion for Reconsideration on May 27, 2010 and May 26, 2010, respectively, which motions were noted without action. The winning candidates for provincial and congressional seats in Surigao del Norte also sought to intervene in this case; however, their motion for intervention was denied on July 20, 2010.

Subsequent to the Motions for Reconsideration, Justice Nachura has taken pains to compare the requisites for the creation of the different local government units (LGUs) in order to highlight what, in my view, is a glaring inconsistency in the provisions of the law. To summarize:

LGU	Land Area Requirement
Barangay	**No minimum land area requirement.** Rather, the *barangay* must be created out of a contiguous territory with a population of at least two thousand (2,000) inhabitants [Sec. 386(a), LGC] **The territory need not be contiguous if it comprises two (2) or more islands.** [Sec. 386(b), LGC]
Municipality	**Contiguous territory of at least fifty (50) square kilometers** Note — the land area requirement is IN ADDITION to the income requirement of at least Two Million Five Hundred Thousand Pesos (PhP2,500,000.00) in average annual income for the last 2 consecutive years AND the population requirement of at least Twenty Five Thousand (25,000) inhabitants. [Sec. 442(a), LGC] **The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands.** The territory need not be contiguous if it comprises two (2) or more islands. [Sec. 442(b), LGC]
City	**Contiguous territory of at least one hundred (100) square kilometers** Note — a city must have an average annual income of at least Twenty Million Pesos (PhP20,000,000.00) for the last 2 consecutive years AND comply with either the land area requirement OR have a population of at least one hundred fifty thousand (150,000) inhabitants. [Sec. 450(a), LGC] **The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands.** The territory need not be contiguous if it comprises two (2) or more islands. [Sec 450(b), LGC]

Province	**Contiguous territory of at least two thousand (2,000) square kilometers.** Note — a province must have an average annual income of at least Twenty Million Pesos (PhP20,000,000.00) AND comply with either the land area requirement OR have a population of at least two hundred fifty thousand (250,000) inhabitants. [Sec. 461(a), LGC] **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.** [Sec 461(b), LGC]

As Justice Nachura points out, as regards the creation of *barangays*, land area is not included as a requirement. However, a minimum land area is provided for the creation of municipalities, cities, and provinces. Furthermore, while an exemption[4] is provided for municipalities and cities in cases where the LGU concerned is composed of one or more islands, in stark contrast, no such exemption exists with respect to provinces.

It is not difficult to see why no exemption is needed for *barangays* — why exempt them from a requirement that does not even apply to them? In fact, the inclusion of the clause "[t]he territory need not be contiguous if it comprises two (2) or more islands" in Sec. 386(b) of the LGC appears to be surplusage. But I cannot see why there would be a difference in treatment between cities and municipalities, on one hand, and provinces, on the other. In fact, as Justice Nachura points out, this may lead to anomalous results. This leads me to conclude that Justice Nachura's interpretation is indeed correct — that the legislature fully intended to exempt LGUs from the land area requirement in cases where the LGU concerned encompassed two or more islands, as provided in Section 442 (for municipalities)

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[4] That "[t]he requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands."

and Section 450 (for cities), but this legislative policy was not carried over to Section 461 (for provinces). Consequently, Article 9(2) of the LGC's Implementing Rules and Regulations were precisely enacted in order to correct the congressional oversight.

Our esteemed colleague, Mr. Justice Diosdado M. Peralta, suggests that this interpretation is implausible because even if there were any such oversight, Congress had every opportunity in the last 19 years to correct its mistake. To this I would only observe that Congress has never, in the last 19 years, been faced with a situation where an amendment to Section 461 of the LGC was necessary or desirable, and no case concerning the land area requirement for provinces has ever been brought before this Court since the LGC's enactment.[5] The only case

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[5] Since the effectivity of the Local Government Code on January 11, 1992, no issue has been raised concerning the land area requirement of provinces. The following provinces have been successfully created since 1992 – Biliran, Guimaras, Saranggani, Kalinga, Apayao, Compostela Valley, and Zamboanga Sibugay, and all of them had land areas of more than 2,000 sq. km. each.

Biliran and Guimaras (previously subprovinces of Leyte and Iloilo, respectively) were converted into regular provinces, pursuant to Sec. 462 of the Local Government Code. Sec. 462 provides:

> SEC. 462. *Existing Sub-Provinces.* —Existing sub- provinces are hereby converted into regular provinces upon approval by a majority of the votes cast in a plebiscite to be held in the said subprovinces and the original provinces directly affected. The plebiscite shall be conducted by the Comelec simultaneously with the national elections following the effectivity of this Code.

Saranggani was separated from South Cotabato in accordance with Republic Act No. 7228, An Act Creating The Province Of Saranggani (1992). It has a land area of 3,972 sq. km. (http://www.saranggani.gov.ph/seventowns.php).

Kalinga-Apayao was separated into the provinces of Kalinga and Apayao by virtue of Republic Act No. 7878, An Act Converting The Sub-Provinces Of Kalinga And Apayao Into Regular Provinces To Be Known As The Province Of Kalinga And The Province Of Apayao, Amending For The Purpose Republic Act No. 4695 (1995). Kalinga has a land area of 3,164.3 sq. km. (http://www.nscb.gov.ph/rucar/fnf_kalinga.htm) while Apayao has a land area of 4,120 sq. km. (http://www.nscb.gov.ph/rucar/fnf_apayao.htm)

that has mentioned the land area requirement for provinces, *Tan v. Commission on Elections,*[6] (regarding the invalidation of *Batas Pambansa Bilang* 885 which created the province of Negros Del Norte) dealt with the matter only tangentially, at best.[7]

Justice Peralta also opines that there is no need to search for the legislative intent, since the language of the law is plain, clear, and unambiguous. I would submit, however, that it is equally true that the statute must be read as a whole, that its clauses and phrases are not detached and isolated expressions, but that each and every part must be considered in order to ascertain its meaning.[8]

Therefore, the statute, read as a whole, in the light of its legislative history, cannot be said to preclude the interpretation placed on it by the majority. But in interpreting a statute [such as the Local Government Code], we cannot take one sentence, one section, or even the entire statute alone and say that it has a "plain meaning" as

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Compostela Valley was separated from Davao by virtue of Republic Act No. 8470, An Act Creating The Province Of Compostela Valley From The Province Of Davao Del Norte, And For Other Purposes (1998), and has a land area of 4,667 sq. km. (http://www.nscb.gov.ph/ru11/prov_profile/comval.htm).

Zamboanga Sibugay was separated from Zamboanga del Sur by virtue of Republic Act No. 8973, An Act Creating The Province Of Zamboanga Sibugay From The Province Of Zamboanga Del Sur And For Other Purposes (2000). It has a land area of 3,362.22 sq. km. (http://www.zamboanga.com/zs/).

[6] 226 Phil. 624 (1986).

[7] *Tan v. Commission on Elections* did not directly discuss the requirement of land area under Batas Pambansa Bilang 337, but rather, concerned the proper construction of the "unit or units affected" for a plebiscite. However, the Court did state that the "territory" in Section 197 of Batas Pambansa Bilang 337 was intended to apply to land area only.

[8] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, *citing Land Bank of the Philippines v. AMS Farming Corporation*, G.R. No. 174971, October 15, 2008, 569 SCRA 154, 183, *Mactan-Cebu International Airport Authority v. Urgello*, G.R. No. 162288, April 4, 2007, 520 SCRA 515, 535, and *Smart Communications, Inc. v. The City of Davao*, G.R. No. 155491, September 16, 2008, 565 SCRA 237, 247-248.

if there were an objective formula in the few words simply waiting to be grasped by the courts. Instead the statute must be read as a whole, taking all of its provisions and reading them in the context of the legal fabric to which they are to be applied. An interpretation that creates an admittedly anomalous result is not salved by the majority's apologia that, if we read the statute in that fashion, Congress created the anomaly. Instead the question is whether the statute read as a whole was intended by Congress to create such results. The law is not an isolated bundle of capricious and inconsistent commands by a legislature presumed to react mindlessly.[9]

It is also relevant that the Senate and the House of Representatives, represented by the Office of the Solicitor General, have asserted that Congress intended that provinces composed of one or more islands should be exempted from the 2,000 sq. km. land area requirement. Surely, the legislature's will in this case should be given deference, as a co-equal branch of government operating within its area of constitutional authority.

I also cannot help but note that the Dinagat Islands is not the first small island-province which has been separated from a larger province through legislative imprimatur. The Court may take judicial notice of the fact that the island-provinces of Batanes (previously annexed to Cagayan),[10] Camiguin (previously a sub-province of Misamis Oriental),[11] Siquijor (previously a sub-

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[9] *United States v. Acres of Land Situated in Grenada and Yalobusha Counties Mississippi Jg* [1983] USCA5 583; 704 F.2d 800; 20 ERC 1025 (12 May 1983).

[10] ACT NO. 1952, An Act to Provide for the Establishment of the Province of Batanes; to Amend Paragraph Seven of Section Sixty Eight of Act Numbered Eleven Hundred Eighty Nine in Certain Particulars; to Authorize the Approval of the Governor-General to extend the Time for the Payment without Penalty and Taxes and Licenses; to Amend Section Five of Act Numbered Fifteen Hundred and Eighty Two entitled the "Election Law" by Increasing the Number of Delegates to the Philippine Assembly to Eighty One, and for other Purposes (1909).

[11] REPUBLIC ACT NO. 4669, An Act Separating the Subprovince of Camiguin from the Province of Misamis Oriental and Establishing it as an Independent Province (1966).

province of Negros Oriental),[12] Biliran (previously a sub-province of Leyte),[13] Guimaras (previously a sub-province of Iloilo),[14] and Marinduque (previously annexed to Tayabas)[15] also have land areas of well below 1,000 square kilometers each.

To be clear, I am not making an equal protection argument, since none of these provinces were created under the auspices of the LGC. I only point this out to show that Congress, in drafting the LGC, was cognizant of the special circumstances surrounding the creation of island-provinces, and evidently intended that economic development be a more significant consideration than size. The Congressional deliberations bear this out:

CHAIRMAN LINA:	Will you look at the case of – how many municipalities are there in Batanes province?
CHAIRMAN ALFELOR:	Batanes is only six.
CHAIRMAN LINA:	Six town. Siquijor?
CHAIRMAN ALFELOR:	Siquijor. It is region?
CHAIRMAN LINA:	Seven.
CHAIRMAN ALFELOR:	Seven. *Anim.*
CHAIRMAN LINA:	Six also.
CHAIRMAN ALFELOR:	Six also.
CHAIRMAN LINA:	It seems with a minimum number of towns?
CHAIRMAN ALFELOR:	The population of Siquijor is only 70 thousand, not even one congressional district. *But tumaas in 1982*. Camiguin, that is

[12] REPUBLIC ACT NO. 6398, An Act Separating the Subprovince of Siquijor from the Province of Oriental Negros and Establishing it as an Independent Province (1971).

[13] Sec. 462 of the LOCAL GOVERNMENT CODE.

[14] *Id.*

[15] ACT NO. 2880, An Act Authorizing the Separation of the Subprovince of Marinduque from the Province of Tayabas and the Reestablishment of the Former Province of Marinduque, and for other Purposes (1920).

	Region 9. *Wala dito. Nagtataka nga ako ngayon.*
CHAIRMAN LINA:	Camiguin, Camiguin.
CHAIRMAN ALFELOR:	That is region? Camiguin has five municipalities, with a population of 63 thousand. But we do not hold it against the province because maybe that's one stimulant where growth can grow, can start. The land area for Camiguin is only 229 square kilometers. So if we hard fast on requirements of, we set a minimum for every province, *palagay ko* we just leave it to legislation, *eh*. Anyway, the Constitution is very clear that in case we would like to divide, we submit it to a plebiscite. *Pabayaan natin ang tao. Kung maglalagay tayo ng set ng minimum, tila yata mahihirapan tayo eh.* Because what is really the thrust of the Local Government Code? Growth. To devolve powers in order for the community to have its own idea how they will stimulate growth in their respective areas. So in every geographical condition, *mayroong sariling* idiosyncrasies *eh*. We cannot make a generalization.[16]

Though this Court certainly has the authority to override the legislative interpretation, I do not believe it is appropriate or necessary in this instance. Rather, we should acknowledge the "strong presumption that a legislature understands and correctly

[16] Bicameral Conference Committee on Local Government (Book III), March 13, 1991, pp. 18-28, in FN 14 of Justice Nachura's Reflections.

appreciates the needs of its own people [and] that its laws are directed to problems made manifest by experience."[17]

I do not propose that the Court overturn its settled precedent to the effect that Implementing Rules and Regulations cannot go beyond the terms of the statute. But under these limited circumstances — where a reading of the entire law reveals inconsistencies which this Court must reconcile, where the legislature has informed the Court of its intentions in drafting the law, and where the legislative history of the LGC leads one to the inescapable conclusion that the primary consideration in the creation of provinces is actually administrative convenience, economic viability, and capacity for development — then it would be far more just to give effect to the will of the legislature in this case.

In the words of Mr. Justice Isagani Cruz:

But as has also been aptly observed, we test a law by its results; and likewise, we may add, by its purposes. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice.

Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in a particular case because of its peculiar circumstances. In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.

As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command

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[17] *Enron Corp. v. Spring Independent School District*, 922 S.W. 2d 931; *Middleton v. Texas Power & Light Co.* (1919), 249 U.S. 152, at 157.

without regard to its cause and consequence. "Courts are apt to err by sticking too closely to the words of a law," so we are warned, by Justice Holmes again, "where these words import a policy that goes beyond them." While we admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to "the letter that killeth" but to "the spirit that vivifieth," to give effect to the law maker's will.

> The spirit, rather than the letter of a statute determines its construction, hence, a statute must be read according to its spirit or intent. For what is within the spirit is within the letter but although it is not within the letter thereof, and that which is within the letter but not within the spirit is not within the statute. Stated differently, a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers.[18]

For these reasons, I thus concur in the opinion of Justice Nachura.

CONCURRING OPINION

ABAD, *J*.:

I fully concur in the resolution that Justice Antonio Eduardo Nachura wrote for the majority. I would want, however, to reply briefly to the somewhat harsh criticism hurled against the Court in connection with its action.

The Court is accused of "flip-flopping" in this case as in the others before it, specifically the case of the sixteen municipalities that Congress converted into cities. Since the Court is a collegial body, the implication is that its members or the majority collectively flip-flopped in their decisions.

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[18] *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 272-273 (1987).

But, as I said in my concurring opinion in the Court's April 12, 2011 resolution in the *League of Cities* case,[1] the charge is unfair, as it is baseless. The Court is not a living person whose decisions and actions are ruled by the whims of one mind. As a collegial body, the Court acts by consensus among its fifteen members.

In the *League of Cities,*[2] neither all the Justices nor most of them did a somersault as implicitly suggested. Congress passed a number of laws converting sixteen municipalities into cities. The League of Cities assailed these laws as unconstitutional on the ground that the sixteen municipalities involved did not meet the ₱100 million minimum income requirement of the Local Government Code. For their part, the municipalities countered that their laws constituted valid legislative amendments of such requirement.

The Court originally voted in the case on November 18, 2008. A majority of six Justices voted to annul the laws, five members dissented, and four took no part (6-5-4). The lead of those who voted to annul the laws firmed up with an increase of 2 votes when the Court took up the motion for reconsideration of the sixteen municipalities on March 31, 2009. The vote was 7-5-2.

But when on April 28, 2009 the Court acted on the sixteen municipalities' second motion for reconsideration, the vote resulted in a tie, 6-6-3. The Court was divided in its interpretation of this 6-6 result. One group argued that the failure of the minority to muster a majority vote had the effect of maintaining the Court's last ruling. Some argued, however, that since the Constitution required a majority vote for declaring laws passed by Congress unconstitutional, the new voting restored the constitutionality of the subject laws. When a re-voting took place on December 21, 2009 to clear up the issue, the result shifted in favor of upholding the constitutionality of the laws of

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[1] G.R. No. 176951, *League of Cities, et al. vs. Commission on Elections, et al.*, April 12, 2011.

[2] *Supra*.

the sixteen municipalities, 6-4-3 (2 vacancies), with the new majority voting to uphold the constitutionality of the laws that converted the sixteen municipalities into cities.

But when the Court voted on the motion for reconsideration of the losing League of Cities on August 24, 2010, the majority shifted anew on a vote of 7-6-2. The sixteen municipalities filed a motion for reconsideration of the new decision and voting took place on February 15, 2011, resulting in a vote of 7-6-2 in favor of again upholding the constitutionality of the laws of the sixteen municipalities.

To repeat what I said in my concurring opinion in the League of Cities,[3] those who say that the Court, acting through its members, flipped-flopped in the League of Cities case should consider the following:

One. The Justices did not on each occasion simply decide to change their minds. There were pending motions for reconsideration in the case and the Justices had a duty to vote on them on the dates the matters came up for decision.

The Court is no orchestra with its members playing one tune under the baton of a maestro. They bring with them a diversity of views, which is what the Constitution prizes, for it is this diversity that filters out blind or dictated conformity.

Two. Of **twenty-three** Justices who voted in the case at any of its various stages, **twenty** stood by their original positions. They never reconsidered their views. Only three did so and not on the same occasion, showing no wholesale change of votes at any time.

Three. To **flip-flop** means to vote for one proposition at first (**take a stand**), shift to the opposite proposition upon the second vote (**flip**), and revert to his first position upon the third (**flop**). Not one of the twenty-three Justices **flipped-flopped**.

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[3] *Supra.*

Four. The three Justices who changed their votes did not do so in one direction. Justice Velasco changed his vote from a vote to annul to a vote to uphold; Justice Villarama from a vote to uphold to a vote to annul; and Justice Mendoza from a vote to annul to a vote to uphold. None of them flipped-flopped since the three never changed their votes afterwards.

Notably, no one can dispute the right of a judge, acting on a motion for reconsideration that the losing party files, to change his mind regarding the case. The rules are cognizant of the fact that human judges could err and that it would merely be fair and right for them to correct their perceived errors upon a motion for reconsideration. Even God, who had decided to destroy the Israelites for worshipping a golden calf, reconsidered after Moses stood in the gap for them.[4]

Five. Evidently, the voting in the *League of Cities* is not a case of massive flip-flopping by the Justices of the Court. Rather, it is a case of tiny shifts in the votes, occasioned by the consistently slender margin that one view held over the other. This reflected the nearly even soundness of the opposing advocacies of the contending sides.

Six. It did not help that in one year alone in 2009, seven Justices retired and were replaced by an equal number. It is such that the resulting change in the combinations of minds produced multiple shifts in the outcomes of the voting. No law or rule requires succeeding Justices to adopt the views of their predecessors. Indeed, preordained conformity is anathema to a democratic system.

In this Dinagat Islands case the vote changed when, acting on the intervention of a third party with genuine interest in the outcome of the case, the majority in the Court was persuaded to change its mind and uphold the act of Congress in creating the province. The previous voting was too close and it took the vote of just two Justices, changing their previous positions, to ensnare the victory from those who oppose the conversion of the Dinagat Islands into a province.

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[4] Exodus 32:7-14

Neither the Court nor its Justices flip-flopped in this case. They did not take one position, later moved to the opposite position, and then reverted to the first. They merely exercised their right to reconsider an erroneous ruling.

The charge of flip-flopping is unfair.

DISSENTING OPINION

CARPIO, *J.*:

I join Justice Diosdado M. Peralta and Justice Arturo D. Brion in their dissents. I file this separate dissenting opinion because the majority's ruling today, legitimizing the creation of a province in blatant violation of the Constitution and the Local Government Code, opens the floodgates to the proliferation of pygmy provinces and legislative districts, mangling sacred and fundamental principles governing our democratic way of life and exacerbating the scourge of local dynastic politics.

First. **The Dinagat Islands province simply does not meet the criteria for the creation of a province.** To implement the Constitution and for reasons of political practicality and economic viability, Section 461 of the Local Government Code bars the creation of provinces unless **two of three minimum requirements** are met. Section 461 of the Code provides:

SEC. 461. *Requisites for Creation*. — (a) A province may be created if it has an **average annual income**, as certified by the Department of Finance, of **not less than Twenty million** pesos (₱20,000,000.00) based on 1991 prices **and either of the following requisites**:

(i) **a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or**

(ii) **a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:**

Provided, that the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of

said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.**

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income. (Emphasis supplied)

Section 461 requires a province to meet the minimum income requirement **and** either the minimum land area or minimum population requirement. **In short, two of the three minimum requirements must be satisfied, with the minimum income requirement one of the two.** The Dinagat Islands province, whose income at the time of its creation in 2006 was ₱82,696,433.22, satisfies **only** the minimum income requirement. **The Dinagat Islands province does not meet either the minimum land area requirement or the minimum population requirement.** Indisputably, Dinagat Islands cannot qualify as a province under Section 461 of the Local Government Code, the law that governs the creation of provinces.

Based on the 2000 census, Dinagat Islands' population stood only at 106,951, less than half of the statutory minimum of 250,000. In the census conducted seven years later in 2007, one year after its creation, its population grew by only 13,862, reaching 120,813, still less than half of the minimum population required. The province does not fare any better in land area, with its main island, one sub-island and around 47 islets covering only 802.12 square kilometers, less than half of the 2,000 square kilometers minimum land area required.

The Local Government Code contains **no exception** to the income and population or land area requirements in creating provinces. What the Code relaxed was the *contiguity* rule for provinces consisting of "two (2) or more islands or is separated by a chartered city or cities which do not contribute to the

income of the province." The minimum land area of 2,000 square kilometers in the Code for the creation of a province was never changed, and **no exception was ever created by law**. Hence, **the exception created in the implementing rule**[1] of the Local Government Code, exempting provinces "composed of one (1) or more islands" from the minimum land area requirement, is void for being *ultra vires*, granting a statutory exception that the Local Government Code clearly withheld. The implementing rule, being a mere administrative regulation to implement the Local Government Code, cannot amend the Code but must conform to the Code. Only Congress, and not any other body, is constitutionally empowered to create, through amendatory legislation, exceptions to the land area requirement in Section 461 of the Code.

The majority argues that since the exception of island provinces from the minimum land area requirement was inserted in the implementing rules by the congressional Oversight Committee, the Court should extend great weight to this "**legislative construction**" of the Code. This is gross error. *First*, in *Macalintal v. Comelec*,[2] we ruled that a congressional oversight committee has no power to approve or disapprove the implementing rules of laws because the implementation of laws is purely an executive function. The intrusion of the congressional Oversight Committee in the drafting of implementing rules is a violation of the separation of powers enshrined in the Constitution. This Court cannot allow such intrusion without violating the Constitution. *Second*, Congress has no power to construe the law. Only the courts are vested with the power to construe the law. Congress may provide in the law itself a definition of terms but it cannot define or construe the law through its Oversight Committee ***after*** it has enacted the law because such power belongs to the courts.

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[1] Article 9, paragraph 2 ("[T]he land area requirement shall not apply where the proposed province is composed of one or more islands. x x x")

[2] G.R. No. 157013, 10 July 2003.

It is not difficult to see why Congress allowed an exception to the land area requirement in the creation of municipalities[3] and cities[4] **but withheld it for provinces**. The province, as the largest political and corporate subdivision of local governance in this country, serves as the geographic base from which municipalities, cities and even another province will be carved, fostering local development. Today's majority ruling, allowing the creation of an island province irrespective of population and land area so long as it has ₱20 million annual income, wipes away the territorial and population tiering among provinces, cities and municipalities the Local Government Code has carefully structured, reducing provinces to the level of a rich municipality,[5] unable to host otherwise qualified new smaller local government units for sheer lack of space.

Despite the majority's ingenious resort to "legislative construction" in the implementing rules to exempt Dinagat Islands from the minimum land area requirement, the majority cannot escape one glaring fact: Dinagat Islands province satisfies only the minimum income requirement under Section 461 of the Local Government Code. **Even assuming that the minimum land area requirement does not apply to island provinces, an assumption that is devoid of any legal basis, Dinagat Islands still fail to meet the minimum population requirement.** Under Section 461 of the Code, two of the three minimum requirements must be satisfied in the creation of a province, with the income requirement being one of the two minimum requirements. The majority's ruling today creates the Dinagat

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[3] Section 442 (b) ("The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds. **The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands**. x x x") (emphasis supplied).

[4] Section 450 (b) ("The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. **The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands**. x x x") (emphasis supplied).

[5] Which, under Section 442, must have minimum income, population **and** land area of ₱2.5 million (based on 1991 prices), 25,000 and 50 square kilometers (contiguous), respectively.

Islands province despite the indisputable fact that it satisfies only one of the two necessary requirements prescribed in Section 461. The majority's ruling clearly violates Section 461 of the Code, no question about it.

Second. It is mandatory that a province must have a population of at least 250,000. The 1987 Constitution mandates that "**each province[,] shall have at least one representative**."[6] In *Sema v. Commission on Elections*,[7] we categorically ruled that "**the power to create a province or city inherently involves the power to create a legislative district**." Thus, when Congress creates a province it necessarily creates at the same time a legislative district. The province must comply with the minimum population of 250,000 because the Constitution mandates that 250,000 shall be the minimum population for the creation of legislative districts.[8]

The Constitution provides for **proportional representation in the House of Representatives** when it declares that "**legislative districts [shall be] apportioned among** ***provinces, cities, and the Metropolitan Manila area*** **in accordance with the number of their respective inhabitants** x x x." This means that for every given number of inhabitants, "***provinces, cities and the Metropolitan Manila area***" will be entitled to one representative. In consonance with this constitutional rule on proportional representation and in compliance with the Equal Protection Clause, the minimum population for the creation of legislative districts in ***provinces and cities*** must be the same. Since the Constitution expressly provides that the minimum population of legislative districts in cities shall be 250,000,[9]

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[6] Section 5(3), Article VI of the 1987 Constitution provides: "Each legislative district shall comprise, as far as practicable, contiguous, compact, and adjacent territory. **Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative**." (Emphasis supplied)

[7] G.R. Nos. 177597 & 178628, 16 July 2008.

[8] *Id*.

[9] *Id*.

then it necessarily follows that the minimum population of legislative districts in provinces shall also be 250,000. Otherwise, there will be a blatant violation of two fundamental principles of our democratic system — the constitutional requirement of proportional representation in the House of Representatives for "***provinces, cities*** and the Metropolitan Manila area" and the "one person, one vote" rule rooted in the Equal Protection Clause.

Moreover, to treat land area ***as an alternative*** to the minimum population requirement (based on the conjunctive "either" in Section 461) destroys the supremacy of the Constitution, making the statutory text prevail over the clear constitutional language mandating a minimum population through the requirement of proportional representation in the apportionment of all legislative districts. **In short, in the creation of a province neither Congress nor the Executive can replace the minimum population requirement with a land area requirement because the creation of a province necessarily creates at the same time a legislative district, which under the Constitution must have a minimum population of 250,000**.

Because of the majority's ruling today, the House of Representatives will now count among its members a representative of a "premium" district consisting, as of the 2007 census, of only 120,813 constituents, well below the minimum population of 250,000 his peers from the other regular districts represent. This malapportionment tolerates, on the one hand, vote undervaluation in overpopulated districts, and, on the other hand, vote overvaluation in underpopulated ones, in clear breach of the "one person, one vote" rule rooted in the Equal Protection Clause. To illustrate, the 120,813 inhabitants of Dinagat Islands province are entitled to send one representative to the House of Representatives. In contrast, a legislative district in Metro Manila needs 250,000 inhabitants to send one representative to the House of Representatives. **Thus, one vote in Dinagat Islands has the weight of more than two votes in Metro Manila for the purpose of representation in the House of Representatives**. This is not what our "one person, one vote" representative democracy is all about.

What special and compelling circumstances have the majority found that entitle the inhabitants of Dinagat Islands to such a privileged position? Do the inhabitants of Dinagat Islands have more than twice the IQ of inhabitants of Metro Manila? Do the inhabitants of Dinagat Islands pay more than twice the amount of taxes that inhabitants of Metro Manila pay? Are the inhabitants of Dinagat Islands the chosen people of God to lead this country to greatness? Have the Filipino people, in a plebiscite, agreed to confer on the inhabitants of Dinagat Islands such privileged position, which is the only constitutionally justifiable way to grant such privileged status? Indeed, the gross malapportionment this case presents is just as constitutionally damaging as that in *Aquino v. Commission on Elections*[10] where the population of the reapportioned five legislative districts in Camarines Sur, based on relevant census, fluctuated from a high of 439,043 (Third District) to a low of 176,383 (First District).

Aquino v. Commission on Elections, and now this Dinagat Islands province case, will mangle beyond recognition the bedrock constitutional principles of proportional representation in the House of Representatives, as well as the egalitarian rule of "one person, one vote" universally honored in all modern civilized societies and rooted in the Equal Protection Clause. With *Aquino v. Commission on Elections*, a legislative district in provinces can be created with no minimum population requirement. Thus, a municipality with a population of only 25,000 can have a legislative district. With this Dinagat Islands province case, a province, and necessarily a legislative district, can be created with a population of only 120,000 or even less. **In fact, under both *Aquino v. Commission on Elections* and this Dinagat Islands province case, there is no minimum population requirement whatsoever in the creation of legislative districts in provinces, and thus even a *barangay* with a population of 1,000 can be a legislative district.** In sharp contrast, a legislative district in cities can only be created with a minimum population of 250,000 as expressly required in the Constitution. To repeat, the majority has thrown into the dustbin of history

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[10] G.R. No. 189793, 617 SCRA 623 (2010).

the bedrock democratic principles of proportional representation in the House of Representatives and the "one person, one vote" rule rooted in the Equal Protection Clause — both of which are enshrined in our Constitution and in our democratic way of life. ***Where is the majority of this Court bringing our representative democracy***?

Third. Quasi-malapportionment laws like RA 9355 are double-edged knives thrust at the heart of the anti-dynastic vision of the 1987 Constitution — it fosters entrenchment of political dynasties and fuels feudalistic practices by assuring political dynasties easy access to public funds.

Members of Congress are entitled to an equal share of pork barrel funds regardless of the size of their constituencies. Thus, each seat in the House of Representatives translates to a potent platform for congressmen to cultivate patronage by doling out development, livelihood and support projects using pork barrel funds allocated in annual budgets. For each new province created — entailing at the same time the creation of a legislative district — a pipeline to a huge pool of resources is opened, with the Congressman enjoying wide discretion on how and where he will dispense such legislative largesse.

Under the majority's ruling, not only land area but also population is **immaterial** in creating island provinces. This is an open invitation to ruling political clans strategically situated in this country's thousands of islands to sponsor the creation of more underpopulated provinces within their political bailiwicks,[11] enabling them to capture more pork barrel funds, thus tightening their grip on the levers of power. This inevitably fuels the feudal practices plaguing Philippine local politics by fortifying patron (congressman) — ward (constituents) relations upon which dynastic politics thrive. All this at the expense of taxpayers, mostly residing in city legislative districts with minimum populations of 250,000, who surely would not want their taxes

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[11] Much like in the creation of legislative districts, the creation of local government units is done at the behest of legislators representing the relevant locality.

to be spent as pork barrel funds of political dynasties in underpopulated legislative districts in island provinces.

The 1987 Constitution is not neutral on the scourge of dynastic politics, a phenomenon that concentrates political power and public resources within the control of few families whose members alternately hold elective offices, deftly skirting term limits. Its exclusionary effect on access to public service led the framers of the 1987 Constitution to mandate that the State "guarantee equal access to opportunities for public service" and that Congress "*prohibit* political dynasties x x x."[12] To the Filipino people's misfortune, Congress' non-implementation of this constitutional directive is now aggravated by this Court's wantonly loose translation of the Constitution's apportionment standard of proportional representation.[13] Thus, instead of ensuring compliance with the Constitution's mandate prohibiting political dynasties, this Court has turned complicit to local politicians' predilection for dynastic entrenchment.

Fourth. Far from being dispensable components in the creation of local government units, population and land area – not income – are the pivotal factors in funding local government units. Under the Local Government Code, these components determine 75% of the share from the national taxes (Internal Revenue Allotment or IRA) each local government unit receives, the lifeblood of their operations, based on the following formula:

(a) Population – Fifty percent (50%)
(b) Land Area – Twenty-five percent (25%)
(c) Equal sharing – Twenty-five percent (25%).[14]
x x x x x x x x x

Thus, population, with a weight of 50%, ranks first in importance in determining the financial entitlement of local government units, followed by land area with a weight of 25%.

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[12] Section 26, Article II (emphasis supplied).

[13] Paradigmatically shown in *Aquino v. Commission on Elections*, G.R. No. 189793, 617 SCRA 623 (2010).

[14] Section 285.

By treating Dinagat Islands' land area of 802.12 square kilometers as compliant with the 2,000 square kilometers minimum under Section 461, **the majority *effectively* included in their land area computation the enclosed marine area or waters of Dinagat Islands.** This disposition not only reverses, without cause, decades' old jurisprudence,[15] it also wreaks havoc on the national government's allocation of the internal revenue allotment to existing island provinces which would be justified in invoking today's ruling to clamor for increased revenue shares due to increased "land area." In short, other island provinces, like Romblon, Marinduque, Sulu, Tawi-Tawi and Palawan, can now claim their enclosed marine areas as part of their "land area" in computing their share of the IRA.[16]

On the part of landlocked provinces hosting large bodies of water, like Rizal, Laguna, Batangas, Cavite and Lanao del Sur, the situation is reversed. Finding themselves holding, but not surrounded by, water, the submerged territory, no matter how large, is excluded from the computation of their land area, thus proportionately lowering their share in the revenue allotment compared to their island counterparts.

Thus, in its zeal to legalize the creation of an obviously disqualified local government unit, the majority unwittingly creates classes of elite and disadvantaged provinces, using the most arbitrary factor of geographic accident as basis for classification. Even under the most benign equal protection analysis, this does not pass constitutional muster.

Fifth. The Constitution and the Local Government Code are normative guides for courts to reasonably interpret and give

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[15] In *Tan v. Commission on Elections* (No. 73155, 11 July 1986, 142 SCRA 727), we rejected as baseless the claim that "territory" for purposes of the creation of a province, includes submerged land: "The use of the word territory in this particular provision of the Local Government Code and in the very last sentence thereof, clearly reflects that "territory" as therein used, **has reference only to the mass of land area and excludes the waters over which the political unit exercises control**." (*Id*. at 749; emphasis supplied).

[16] Others island provinces would be Cebu, Bohol, Masbate, Catanduanes, Batanes, Basilan, Siquijor, and Camiguin.

expression to the will of the Filipino people as encoded in their provisions. Members of this Court go beyond the bounds of their sworn duties when they second guess the intent of the Constitution's framers and the people's elected representatives, pretending to act as if they themselves have been accorded electoral mandate to amend statutes as they see fit. No amount of rhetoric singing paeans to the virtues of promoting local autonomy can hide the blatant judicial legislation the majority has succeeded in doing here today, to the detriment of the Constitution's requirements of proportional representation in the House of Representatives, equal protection under the law and the prohibition against political dynasties, not to mention the blatant violation of Section 461 of the Local Government Code.

Accordingly, I vote to **DENY** the Motion to Recall Entry of Judgment, the Motion for Leave to Intervene and to File and Admit Intervenors' Motion for Reconsideration of the Resolution dated 20 July 2010, and the Motion for Reconsideration of the Resolution dated 12 May 2010 filed by the intervenors.

DISSENTING OPINION

BRION, *J*.:

I join the Dissents of Justices Antonio T. Carpio and Diosdado M. Peralta on the strict merits of the case — on why, based on the merits, Republic Act No. 9355 (*RA 9355*), otherwise known as *An Act Creating the Province of Dinagat Islands,* should be declared unconstitutional.

Additionally, I submit this Dissenting Opinion to express my objections ***in the strongest terms*** against the transgressions the Court committed in ruling on this case. The result, which is obvious to those who have been following the developments in this case and current Supreme Court rulings, is another **flip-flop**, made worse by the violations of the Court's own Internal Rules.[1] This is not, of course, the Court's first flip-flop in

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[1] A.M. No. 10-4-20-SC, *The Internal Rules of the Supreme Court*, effective May 22, 2010.

recent memory; we did a couple of remarkable somersaults in our rulings in the case of *League of Cities of the Philippines, et al. v. Comelec*.[2] **This Dissent is written in the hope that the Court's violation of its own rules in this case will be the last, and that the Court will re-think its disposition of this case.**

The Court rendered its **Decision** in this case on **February 10, 2010**, declaring RA 9355 unconstitutional. The Office of the Solicitor General (*OSG*), in behalf of the respondents, and respondent Governor Geraldine Ecleo-Villaroman filed their separate **Motions for Reconsideration**. These were their *first motions for reconsideration.*

On **May 12, 2010**, the Court denied these motions for lack of merit.

On **May 26 and 28, 2010**, respondent Governor Ecleo-Villaroman and the OSG respectively filed their **2nd Motions for Reconsideration**. The Court simply noted these motions without action as they are prohibited pleadings under Section 2, Rule 52 of the Rules of Court. This procedural rule states:

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 Court's Decision of February 10, 2010 became final and executory, and Entry of Judgment was made by the Clerk of Court on **May 18, 2010**. *At that point, the Decision of the Court should have been beyond recall.*

On **June 18, 2010 (*or a full month after entry of judgment*), new parties**, namely — Congressman Francisco T. Matugas, Hon. Sol T. Matugas, Hon. Arturo Carlos A. Egay, Jr., Hon. Vicente G. Castrence, Hon. Mamerto D. Galamida, Hon. Margarito M. Longos, and Hon. Cesar M. Bagundol, filed a *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated*

[2] G.R. Nos. 176951, 177499 & 178056, February 15, 2011.

May 12, 2010. They prayed that they be allowed to intervene in the case since they were the newly elected officials of Surigao del Norte in the May 10, 2010 elections, who were in danger of losing their positions once the Court's February 10, 2010 decision, declaring R.A. No. 9355 unconstitutional, attained finality. Effectively, they took up the cause of the original respondent Province of Surigao del Norte then represented by former Governor Robert Ace Barbers.

The Court denied the motion in its **Resolution of July 20, 2010**, pursuant to Section 2, Rule 19 of the Rules of Court which allows a motion for intervention only before the rendition of judgment by the trial court. Applying this rule to an action originally filed with the Court, we ruled that a motion for intervention could only be filed before, and not after, the final judgment in the case.

Respondent Governor Ecleo-Villaroman filed, on October 22, 2010, an *Urgent Omnibus Motion (To Resolve Motion for Leave of Court to Admit 2nd Motion for Reconsideration and, to Set Aside Entry of Judgment).* Thus, despite the Entry of Judgment, she sought the Court's ruling on her 2nd Motion for Reconsideration that had simply been Noted Without Action by the Court for being a prohibited pleading. The ploy to reopen the case and escape from the consequences of the final judgment was apparent from the move to set aside the Entry of Judgment. Effectively, she was **moving for the third time** to secure the review of the February 10, 2010 Decision that had been declared final, and to re-submit the case for another deliberation on the merits.

Side by side with the original respondent, the would-be intervenors — ***despite the lack of personality to act on the case*** — filed on **October 29, 2010** an *Urgent Motion to Recall Entry of Judgment.* Of course, this move was duly orchestrated with the respondents whose own motions were filed a week earlier. ***This was a motion the would-be intervenors had no personality to file since their proposed intervention, at that point, stood denied.***

The Court *en banc* deliberated on the case and by a vote of 9 in favor and 6 against, decided to lift the entry of judgment and allow the intervention of the new parties. By the same vote, it voted to completely reverse the Decision of February 10, 2010 and declare RA 9355, entitled *An Act Creating the Province of Dinagat Islands*, constitutional.

In acting as it did, the Court did not hesitate, by a 9-6 vote, to disregard existing rules that the Court itself created.

After this vote, the *ponente* modified the majority resolution in reaction to the original version of this Dissent. This time, the majority Resolution claimed that it was acting only on the would-be intervenors' Motion to Lift Entry of Judgment, not on the original respondents' motion to set aside judgment. **The ploy apparently was to avoid the Dissent's position that the Court acted on a prohibited 2nd motion for reconsideration without the required vote.**

The Court, for reasons of its own, has chosen to live with the public fiction that 2nd motions for reconsideration are prohibited pleadings pursuant to Section 2, Rule 52 of the Rules of Court, cited and quoted above. In actual practice, exceptions to this Rule are allowed and what governs is Section 3, Rule 15 of the *Internal Rules of the Supreme Court* which 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.]

In the present case, the Court simply noted without action respondent Governor Ecleo-Villaroman's and the OSG's 2nd

motions for reconsideration because they are prohibited pleadings. The Court thereafter declared its judgment final, and entry of judgment followed. Thus, when Governor Ecleo-Villaroman sought to lift the entry of judgment, her motion — which sought to reopen the case for another review — was effectively a **third motion for reconsideration** that should have been governed by Section 3, Rule 15 of the Internal Rules. **With the modified position that the Court was acting on the movants-intervenors' motion to lift entry of judgment, the majority sought to avoid the restrictive rule on 2nd motions for reconsideration.**

How the Court acted on the respondents' and would-be intervenors' motions is interesting.

a. Violation of the Rule on Reconsideration. By a 9-6 vote, the Court declared the entry of judgment lifted. In so doing, it completely disregarded its own rule that any 2nd motion for reconsideration **can only be entertained through a vote of 2/3 of the actual membership, or of 10 members, of the Court.** It likewise disregarded the rule that 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.** It conveniently forgot, too, when it subsequently claimed that the motion it was considering was not by respondent Governor Ecleo but by the would-be intervenors, that what an original party could no longer do with respect to a final decision, would-be intervenors — practically representing the same interests and who had not even been recognized by this Court — cannot also do; otherwise, what is *directly* prohibited is allowed through indirect means. Unbelievably, among the majority's supporting arguments to support their violation, was that (1) a motion to lift entry of final judgment is not a motion for reconsideration of the decision sought to be declared non-final; and that (2) no exact provision of the Internal Rules covers the lifting of an entered final judgment.

b. Violation of the Rule on Finality of Judgments. Worse than the above transgression, the Court turned a blind eye to the finality of the judgment it had reached in the case.

The judgment in a case becomes final by operation of law (after the lapse of fifteen [15] days from the parties' receipt of the judgment) or upon the Court's declaration of the judgment's finality. Entry of Judgment by the Clerk of Court follows the finality of a judgment, *i.e.*, if no motion for reconsideration is filed with the Court within fifteen (15) days from the parties' receipt of the judgment.

As mentioned above, no second motion for reconsideration can be entertained once a judgment has become final. In this case, the Court disregarded its own rules and entertained a motion to lift the entry of judgment and to reopen the case. It was not an ordinary violation as the judgment lifted was already final. The respondent Governor's motion to lift entry of judgment was effectively a **third motion for reconsideration** (as its objective is to open the final decision for another consideration) and its consequences need no elaborate argument to be understood. For the would-be intervenors, it was a matter of putting the cart before the horse — a move to lift the entry of judgment even before the would-be intervenors had their personality recognized by the Court.

The **principle of immutability of a final judgment** stands as one of the pillars supporting a strong, credible and effective court. To quote what this Court has repeatedly stated on this principle:

> "It is a hornbook rule that **once a judgment has become final** and executory, **it may no longer be modified in any respect,** even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of **whether the modification is attempted to be made by the court rendering it or _*by the highest court of the land*_,** as what remains to be done is the purely ministerial enforcement or execution of the judgment.
>
> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that **at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law.** [x x x], the Supreme Court reiterated that the doctrine of immutability of judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since **litigations must somehow**

come to an end for otherwise, it would "be even more intolerable than the wrong and injustice it is designed to protect."[3] [Emphases supplied.]

This same principle, incidentally, is what we teach students in law schools as a basic bedrock principle in the administration of justice. This is the same principle, too, that is often asked in the bar examinations. Unfortunately, this is the same principle that the Court violated, through a 9-6 vote, when it decided to lift its Entry of Judgment and to entertain the reopening of the final judgment in the case for renewed consideration. This, indeed, is a most unusual move. Did the Majority truly fail to appreciate that the lifting of the entry of judgment is no different in effect from entertaining a motion for reconsideration, and can be made, if at all, by the actual parties, not by would-be intervenors? If a 2nd motion for reconsideration is prohibited and requires a 2/3 vote, can a vote that removes the character of finality from a judgment be any less?

c. Violation of the Rule on Intervention. The Court disregarded as well the rule on interventions.[4] The motion for

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[3] *Vios v. Pantangco, Jr.,* G.R. No. 163103, February 6, 2009, citing *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-BALAIS v. Coca-Cola Bottlers, Philippines, Inc.*, G.R. No. 155651, July 28, 2005, 464 SCRA 507, 513-514; *Apo Fruits Corp. v. CA*, G.R. No. 164195, December 4, 2009, citing *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162, *Kline v. Murray*, 257 P. 465, 79 Mont. 530, *Flores v. Court of Appeals*, G.R. Nos. 97556 & 101152, July 29, 1996, *Land Bank of the Philippines v. Arceo,* G.R. No. 158270, July 21, 2008, 559 SCRA 85, *Temic Semiconductors, Inc. Employees Union (TSIEU)-FFW v. Federation of Free Workers (FFW),* G.R. No. 160993, May 20, 2008, 554 SCRA 122, 134; *Session Delights Ice and Cream Fast Foods v. CA,* G.R. No. 172149, February 8, 2010, citing *Equitable Bank Corp. v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380, 417; and *Navarro v. Metropolitan Bank and Trust Company*, G.R. No. 165697, August 4, 2009, citing *Yau v. Silverio, Sr.*, G.R. No. 158848, February 4, 2008, 543 SCRA 520, *Social Security System v. Isip*, G.R. No. 165417, April 4, 2007, 520 SCRA 310, *Lim v. Jabalde,* G.R. No. 36786, April 17, 1989, 172 SCRA 211 (1983).

[4] Section 2, Rule 19 of the 1997 Rules of Civil Procedure reads: *Time to intervene*. — The motion to intervene may be filed at any time before

intervention was initially denied **since the Court's decision was already final, and intervention could no longer be allowed**. To go around this rule, the would-be intervenors, without first successfully securing leave to intervene, instead filed its own motion to lift entry of judgment — the same 2nd motion from the original respondents that the Court previously simply noted without action. The Court granted the motion to lift judgment by a 9-6 vote, under the fiction that it was an intervening party, not the barred original respondents, who had asked for it.

To complete this blow-by-blow account, the respondents' legal tactician used the ploy of first reopening the case (initially through the original respondents, and subsequently solely through the would-be intervenors), and thereafter moved to allow intervention since the original respondents had by then exhausted their arguments for the constitutionality of RA 9355. On two previous attempts, the original respondents had failed. To get around the insurmountable block posed by the rule on 2nd motions for reconsideration, they fell back on their modified Resolution with the position that another party — the would-be intervenors — wanted to lift the entry of judgment. Once the entry of judgment was lifted and intervention was allowed, it was an easy step to reopen the arguments, add to what the original respondents presented, and submit the case for a ruling on the merits. **The same magic numbers of course prevailed all throughout: 9 to 6.**

In this manner, the original and final ruling of the Court, in what is commonly known as the "Dinagat case" was reversed. Unlike the case of Lazarus who rose from the dead through a miracle, *Dinagat* resurrected because the Court disregarded its own rules and established jurisprudential principles. Of course, it can similarly be called a miracle as no reversal could have taken place if just one of the series of transgressions pointed out did not take place. How such resurrection can happen in the Supreme Court is a continuing source of wonder!

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rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

DISSENTING OPINION

PERALTA, *J.*:

With due respect to the *ponente*, I register my dissent.

On February 10, 2010, the Court rendered a Decision in the instant case, the dispositive portion of which reads:

> WHEREFORE, the petition is **GRANTED**. Republic Act No. 9355, otherwise known as *An Act Creating the Province of Dinagat Islands*, is hereby declared unconstitutional. The proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared **NULL** and **VOID**. The provision in Article 9 (2) of the Rules and Regulations Implementing the Local Government Code of 1991 stating, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared **NULL** and **VOID**.

The Office of the Solicitor General (OSG) filed a motion for reconsideration in behalf of public respondents, and respondent Governor Geraldine Ecleo-Villaroman, representing the New Province of Dinagat Islands, also filed a separate motion for reconsideration of the Decision dated February 10, 2010.

On May 12, 2010, the Court issued a Resolution denying the motions for reconsideration of the OSG and respondent Governor Geraldine Ecleo- Villaroman, representing the New Province of Dinagat Islands, for lack of merit. A copy of the Resolution dated May 12, 2010 was received by the OSG on May 13, 2010, while respondent Governor Geraldine Ecleo-Villaroman, representing the New Province of Dinagat Islands, received a copy of the said Resolution on May 14, 2010.

The Decision dated February 10, 2010 became final and executory on May 18, 2010, as evidenced by the Entry of Judgment[1] issued by the Clerk of Court.

On May 26, 2010, respondent New Province of Dinagat Islands, represented by Governor Geraldine Ecleo-Villaroman,

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[1] *Rollo*, p. 1202.

filed a Motion for Leave to Admit Motion for Reconsideration (of the Resolution dated May 12, 2010) and the said Motion for Reconsideration, while on May 28, 2010, the OSG filed a Motion for Leave to File the Attached 2nd Motion for Reconsideration (of the Resolution dated May 12, 2010) and the aforesaid Motion for Reconsideration. On June 29, 2010, the Court noted without action the foregoing motions of respondents, as the said pleadings were considered second motions for reconsideration of the Decision, which shall not be entertained by the Court, in accordance with Section 2, Rule 52 of the Rules of Court, thus:

SEC. 2. *Second motion for reconsideration.* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

On June 18, 2010, movants-intervenors Congressman Francisco T. Matugas, Hon. Sol T. Matugas, Hon. Arturo Carlos A. Egay, Jr., Hon. Simeon Vicente G. Castrence, Hon. Mamerto D. Galanida, Hon. Margarito M. Longos, and Hon. Cesar M. Bagundol filed a *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010*.

Movants-intervenors claimed that they have legal interest in this case as they are the duly elected officials[2] of Surigao del Norte in the May 10, 2010 elections, and their positions will be affected by the nullification of the election results in the event that the Resolution dated May 12, 2010 in this case is not reversed and set aside.

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[2] Based on the results of the May 10, 2010 elections, movant Congressman Francisco T. Matugas is the Congressman-Elect of the First Legislative District of Surigao del Norte; movants Hon. Sol T. Matugas and Hon. Arturo Carlos A. Egay, Jr. are the Governor-Elect and Vice-Governor-Elect, respectively, of the Province of Surigao del Norte; while movants Hon. Simeon Vicente G. Castrence, Hon. Mamerto D. Galanida, Hon. Margarito M. Longos, and Hon. Cesar M. Bagundol are the Board Members-Elect of the First Provincial District of Surigao del Norte.

On March 9, 2010, the Commission on Elections issued Resolution No. 8790,[3] the pertinent portion of which reads:

x x x x x x x x x

NOW, THEREFORE, with the current system configuration, and depending on whether the Decision of the Supreme Court in *Navarro vs. Ermita* is reconsidered or not, the Commission RESOLVED, as it hereby RESOLVES, to declare that:

a. If the Decision is reversed, there will be no problem since the current system configuration is in line with the reconsidered Decision, meaning that the Province of Dinagat Islands and the Province of Surigao del Norte remain as two separate provinces;

b. If the Decision becomes final and executory before the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District, Surigao del Norte.

x x x x x x x x x

c. If the Decision becomes final and executory after the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte.

The result of the election will have to be nullified for the same reasons given in item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, *Sangguniang Panlalawigan,* First District, Surigao del Norte (with Dinagat Islands) will have to be conducted.

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[3] Entitled *IN THE MATTER OF THE EFFECT OF THE DECISION OF THE SUPREME COURT IN THE CASE OF "RODOLFO G. NAVARRO, ET AL. vs. EXECUTIVE SECRETARY EDUARDO ERMITA, representing the President of the Philippines, ET AL" (G.R. No. 180050), DECLARING THE CREATION OF THE PROVINCE OF DINAGAT ISLANDS AS UNCONSTITUTIONAL THEREBY REVERTING SAID PROVINCE TO ITS PREVIOUS STATUS AS PART OF THE PROVINCE OF SURIGAO DEL NORTE.*

Since movants-intervenors' elective positions would be adversely affected if the Resolution dated May 12, 2010 would not be reversed, they prayed that they be allowed to intervene in this case and to file their Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010, and that their motion for reconsideration be admitted by the Court.

In a Resolution dated July 20, 2010, the Court denied the *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010*. The Court held that, fundamentally, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.[4] Under Section 2, Rule 19 of the Rules of Court, a motion to intervene may be filed at any time before rendition of judgment by the trial court. The Court ruled that since this case originated from an original action filed before this Court, the appropriate time to file the motion-in-intervention is before and not after resolution of this case, citing ***Republic v. Gingoyon***.[5]

It should be noted that this case was decided on February 10, 2010, and the motions for reconsideration of the Decision were denied in the Resolution dated May 12, 2010. The Decision dated February 10, 2010 became final and executory on May 18, 2010. Movants-intervenors' *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010* was filed only on June 18, 2010, clearly after the Decision dated February 10, 2010 had became final and executory; hence, the said motion was correctly denied.

The *ponente* submits that the Court should grant movants-intervenors' motion for reconsideration of the July 20, 2010 Resolution, in full agreement with their position that their interest in this case arose only after they were elected to their respective positions during the May 10, 2010 elections.

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[4] Citing *Heirs of Geronimo Restrivera v. De Guzman*, G.R. No. 146540, July 14, 2004, 434 SCRA 456.

[5] G.R. No. 166429, February 1, 2006, 481 SCRA 457.

As stated by the *ponente*, in their motion for reconsideration of the May 12, 2010 Resolution, movants-intervenors raised three main arguments: (1) that the passage of R.A. No. 9355 operates as an act of Congress amending Section 461 of R.A. No. 7160 (the Local Government Code of 1991); (2) that the exemption from territorial contiguity, when the intended province consists of two or more islands, includes the exemption from the application of the minimum land area requirement; and (3) that the Operative Fact Doctrine is applicable in the instant case.

On the merits of the motion for intervention, the *ponente* urges the Court to take a hard and intent look at the first and second arguments raised by movants-intervenors.

Movants-intervenors contended that R.A. No. 9355 is equivalent to the passage of an amendatory law to the Local Government Code, as instructed in the case of ***League of Cities of the Phils., et al. v. COMELEC, et al.***:[6]

> Consistent with its plenary legislative power on the matter, Congress can, via either a consolidated set of laws or a much simpler, single-subject enactment, impose the said verifiable criteria of viability. These criteria need not be embodied in the local government code, albeit this code is the ideal repository to ensure, as much as possible, the element of uniformity. Congress can even, after making a codification, enact an amendatory law, adding to the existing layers of indicators earlier codified, just as efficaciously as it may reduce the same. In this case, the amendatory RA 9009 upped the already codified income requirement from PhP 20 million to PhP 100 million. At the end of the day, the passage of amendatory laws is no different from the enactment of laws, *i.e.*, the cityhood laws specifically exempting a particular political subdivision from the criteria earlier mentioned. Congress, in enacting the exempting law/s, effectively decreased the already codified indicators. (Emphasis and [u]nderscoring supplied [by movants-intervenors].)

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[6] G.R. Nos. 176951, 177499, 178056, December 21, 2009, 608 SCRA 636.

Defining legislative power, movants-intervenors cited ***Yazaki Torres Manufacturing, Inc. v. Court of Appeals,***[7] thus:

> The legislative power has been described generally as the power to make, alter, and repeal laws. The authority to amend, change, or modify a law is thus part of such legislative power. It is the peculiar province of the legislature to prescribe general rules for the government of society. (Emphasis and [u]nderscoring supplied [by movants-intervenors].)

In view of the foregoing, movants-intervenors argued that the Local Government Code is susceptible to all legislative processes, including amendments, repeals or modifications. They asserted that there is no impediment for another statute, including R.A. No. 9355, to amend or modify the Local Government Code as regards the criteria established for the creation of a province. They noted that R.A. No 9355 relied on Article 9 (paragraph 2) of the Rules and Regulations Implementing the Local Government Code of 1991, particularly the provision that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." Movants-intervenors asserted that the said provision should be deemed incorporated in R.A. No. 9355; hence, they purported that the land area requirement in the Local Government Code was modified by R.A. No. 9355. They contended that "R.A. No. 9355, with the incorporated Article 9 (2) of the IRR of the Local Government Code, became part of the Local Government Code."

Movants-intervenors' argument is unmeritorious. As cited in ***Yazaki Torres Manufacturing, Inc. v. Court of Appeals***, legislative power is the power to make, alter, and repeal laws; thus, the authority to amend, change, or modify a law is part of such legislative power. However, in this case, R.A. No. 9355, is *not* a law amending the Local Government Code on the criteria for the creation of a province. Instead, R.A. No. 9355 is a statute creating the Province of Dinagat Islands; hence, subject to the constitutional provision on the creation of a province.

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[7] G.R. No. 130584, June 27, 2006, 493 SCRA 86, 97.

The constitutional provision on the creation of a province found in Section 10, Article X of the Constitution states:

SEC. 10. **No province, city, municipality, or *barangay* may be created**, divided, merged, abolished, or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.[8]

Pursuant to the Constitution, the Local Government Code of 1991, in Section 461 thereof, prescribed the criteria for the creation of a province.[9] Hence, R.A. No. 9355 did not amend the Local Government Code, but was subject to the criteria contained in Section 461 of the Local Government Code in creating the Province of Dinagat Islands.

Moreover, Section 6 of the Local Government Code provides:

SEC. 6. *Authority to Create Local Government Units*. — **A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province**, city, municipality, or any other political subdivision, or by ordinance passed by the

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[8] Emphasis supplied.

[9] SEC. 461. ***Requisites for Creation***. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices **and either of the following requisites**:

(i) a **contiguous territory** of at least **two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau; or
(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands** or is separated by a chartered city or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income. (Emphasis supplied.)

sangguniang panlalawigan or *sangguniang panlungsod* concerned in the case of a *barangay* located within its territorial jurisdiction, **subject to such limitations and requirements prescribed in this Code**. (Emphasis and underscoring supplied.)

Thus, even the Local Government Code clearly provides that Congress may enact a law creating a local government unit, which in this case involves the creation of a province, but such creation is subject to such limitations and requirements prescribed in the Local Government Code. Hence, the creation of the Province of Dinagat Islands is subject to the requirements contained in Section 461 of the Local Government Code. Since R.A. No. 9355 failed to comply with the land area or population requirement in the creation of the province, it was declared unconstitutional in the Decision dated February 10, 2010.

League of Cities of the Philippines v. Commission on Elections, which was cited by movants-intervenors, does not apply to this case. The Court held in its Resolution dated May 12, 2010, thus:

In *League of Cities of the Philippines v. Commission on Elections,* the Court held that the 16 cityhood laws, whose validity were questioned therein, were constitutional mainly because it found that the said cityhood laws merely carried out the intent of R.A. No. 9009, now Sec. 450 of the Local Government Code, to exempt therein respondents local government units (LGUs) from the ₱100 million income requirement since the said LGUs had pending cityhood bills long before the enactment of R.A. No. 9009. Each one of the 16 cityhood laws contained a provision exempting the municipality covered from the ₱100 million income requirement.

In this case, R.A. No. 9355 was declared unconstitutional because there was utter failure to comply with either the population or territorial requirement for the creation of a province under Section 461 of the Local Government Code.

Contrary to the contention of the movants-intervenors, Article 9 (2) of the Rules and Regulations Implementing the Local Government Code, which exempts a proposed province from the land area requirement if it is composed of one or more islands, cannot be deemed incorporated in R.A. No. 9355,

because rules and regulations cannot go beyond the terms and provisions of the basic law. Thus, in the Decision dated February 10, 2010, the Court held that Article 9 (2) of the Implementing Rules of the Local Government Code is null and void, because the exemption is not found in Section 461 of the Local Government Code.[10] There is no dispute that in case of discrepancy between the basic law and the rules and regulations

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[10] For comparison, Section 461 of the Local Government Code of 1991 and Article 9 of the Rules and Regulations Implementing the Local Government Code of 1991 are reproduced:

The Local Government Code

SEC. 461. ***Requisites for Creation***. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices **and either of the following requisites**:

> **(i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau;** or
>
> (ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.**

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.

Rules and Regulations Implementing the Local Government Code of 1991

ART. 9. *Provinces*.—(a) Requisites for creation—A province shall not be created unless the following requisites on income and either population or land area are present:

> (1) Income — An average annual income of not less than Twenty Million Pesos (₱20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income; and

implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.[11]

Next, movants-intervenors stated that assuming that Section 461 of the Local Government Code was not amended by R.A. No. 9355, they still sought reconsideration of the Resolution dated May 12, 2010, as they adopted the interpretation of the ponente and Justice Perez of Section 461 of the Local Government Code in their respective dissenting opinions. They asserted that the correct interpretation of Section 461 of the Local Government Code is that of Justice Nachura.

It must be stressed that the movants-intervenors' assertion was already answered in the Resolution dated May 12, 2010, denying the motions for reconsideration of the OSG and Governor Geraldine Ecleo-Villaroman, representing the Province of Dinagat Islands. The Court, in the said Resolution, answered the same contention, thus:

The movants now argue that the correct interpretation of Sec. 461 of the Local Government Code is the one stated in the Dissenting Opinion of Associate Justice Antonio B. Nachura.

In his Dissenting Opinion, Justice Nachura agrees that R.A. No. 9355 failed to comply with the population requirement. However, he contends that the Province of Dinagat Islands did not fail to comply with the territorial requirement because it is composed of a group of islands; hence, it is exempt from compliance not only

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(2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by National Statistics Office; or **land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province**. ***The land area requirement shall not apply where the proposed province is composed of one (1) or more islands.*** The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds. (Emphasis supplied.)

[11] *Hijo Plantation, Inc. v. Central Bank*, G.R. No. L-34526, August 9, 1988, 164 SCRA 192.

with the territorial contiguity requirement, but also with the 2,000-square- kilometer land area criterion in Sec. 461 of the Local Government Code, which is reproduced for easy reference:

> SEC. 461. ***Requisites for Creation***. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:
>
> (i) a **contiguous territory of at least two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau; or
>
> (ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office: *Provided*, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.
>
> (b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province**.
>
> (c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.

Justice Nachura contends that the stipulation in paragraph (b) qualifies not merely the word "contiguous" in paragraph (a) (i) in the same provision, but rather the entirety of paragraph (a) (i) that reads:

> (i) a **contiguous territory of at least two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau[.]

He argues that the whole paragraph on contiguity and land area in paragraph (a) (i) above is the one being referred to in the exemption from the territorial requirement in paragraph (b). Thus, he contends that if the province to be created is composed of islands, like the one in this case, then, its territory need not be contiguous and need not have an area of at least 2,000 square kilometers. He asserts that this is because as the law is worded, contiguity and land area are not

two distinct and separate requirements, but they qualify each other. An exemption from one of the two component requirements in paragraph (a) (i) allegedly necessitates an exemption from the other component requirement because the non-attendance of one results in the absence of a reason for the other component requirement to effect a qualification.

Similarly, the OSG contends that when paragraph (b) of Section 461 of the Local Government Code provides that the "territory need not be contiguous if it comprises two (2) or more islands," it necessarily dispenses the 2,000 sq. km. land area requirement, lest such exemption would not make sense. The OSG argues that in stating that a "territory need not be contiguous if it comprises two (2) or more islands," the law could not have meant to define the obvious. The land mass of two or more island will never be contiguous as it is covered by bodies of water. It is then but logical that the territory of a proposed province that is composed of one or more islands need not be contiguous or be at least 2,000 sq. km.

The Court is not persuaded.

Section 7, Chapter 2 (entitled *General Powers and Attributes of Local Government Units*) of the Local Government Code provides:

> SEC. 7. *Creation and Conversion*.—As a general rule, the creation of a local government unit or its conversion from one level to another level **shall be based on verifiable indicators of viability and projected capacity to provide services, to wit**:
>
> **(a) Income**.—It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;
>
> **(b) Population**.—It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and
>
> **(c) Land area**.—**It must be contiguous**, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; **and sufficient**

> **to provide for such basic services and facilities to meet the requirements of its populace**.
>
> Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

It must be emphasized that Section 7 above, which provides for the general rule in the creation of a local government unit, states in paragraph (c) thereof that the land area must be contiguous **and** sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Therefore, there are two requirements for land area: (1) The land area must be contiguous; and (2) the land area must be sufficient to provide for such basic services and facilities to meet the requirements of its populace. A sufficient land area in the creation of a province is at least 2,000 square kilometers, as provided by Section 461 of the Local Government Code.

Thus, Section 461 of the Local Government Code, providing the requisites for the creation of a province, specifically states the requirement of "**a contiguous territory of at least two thousand (2,000) square kilometers**."

Hence, contrary to the arguments of both movants, the requirement of a contiguous territory and the requirement of a land area of at least 2,000 square kilometers are distinct and separate requirements for land area under paragraph (a) (i) of Section 461 and Section 7 (c) of the Local Government Code.

However, paragraph (b) of Section 461 provides two instances of exemption from the requirement of territorial contiguity, thus:

> (b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province**.

Contrary to the contention of the movants, the exemption above pertains only to the requirement of territorial contiguity. It clearly states that the requirement of territorial contiguity may be dispensed with in the case of a province comprising two or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

Nowhere in paragraph (b) is it expressly stated or may it be implied that when a province is composed of two or more islands or when the territory of a province is separated by a chartered city or cities, such province need not comply with the land area requirement of at least 2,000 square kilometers or the requirement in paragraph (a) (i) of Section 461 of the Local Government Code.

Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated, nor construe its provisions by taking into account questions of expediency, good faith, practical utility and other similar reasons so as to relax non-compliance therewith. Where the law speaks in clear and categorical language, there is no room for interpretation, but only for application.

Further, movants-intervenors pointed out that pursuant to R.A. No. 9355, the Province of Dinagat Islands has been organized and is functioning as a province, which cannot just be ignored. Thus, a more realistic and pragmatic view should have been adopted by the Court in its Resolution dated May 12, 2010 following the Operative Fact Doctrine, citing ***Planters Products, Inc. v. Fertiphil Corporation***.[12]

In ***Planters Products, Inc. v. Fertiphil Corporation***, petitioner Planters Products, Inc. (PPI) and private respondent Fertiphil were private corporations, which were both engaged in the importation and distribution of fertilizers, pesticides and agricultural chemicals. On June 3, 1985, then President Ferdinand Marcos issued LOI No. 1465, which provides:

3. The Administrator of the Fertilizer Pesticide Authority to include in its fertilizer pricing formula a capital contribution component of not less than ₱10 per bag. This capital contribution shall be collected until adequate capital is raised to make PPI viable. Such capital contribution shall be applied by FPA to all domestic sales of fertilizers in the Philippines. (Underscoring supplied)

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[12] G.R. No. 166006, March 14, 2008, 548 SCRA 485.

Pursuant to the LOI, Fertiphil paid ₱10.00 for every bag of fertilizer it sold in the domestic market to the Fertilizer and Pesticide Authority (FPA), which amount FPA remitted to the depositary bank of PPI. Fertiphil paid FPA ₱6,689,144.00 from July 8, 1985 to January 24, 1986.

After the 1986 EDSA Revolution, FPA voluntarily stopped the imposition of the ₱10.00 levy. Fertiphil demanded from PPI a refund of the amounts it paid under LOI No. 1465, but PPI refused to accede to the demand. Fertiphil filed a complaint for collection and damages against FPA and PPI with the Regional Trial Court (RTC) of Makati City. It questioned the constitutionality of LOI No. 1465 for being unjust, unreasonable, oppressive, invalid and an unlawful imposition that amounted to a denial of due process of law. Fertiphil alleged that the LOI solely favored PPI, a privately owned corporation, which used the proceeds to maintain its monopoly of the fertilizer industry.

The RTC ruled in favor of Fertiphil, and ordered PPI to pay Fertiphil the sum of ₱6,698,144.00 with interest at 12% from the time of judicial demand; the sum of ₱100,000.00 as attorney's fees; and the cost of suit. Ruling that the imposition of the ₱10.00 levy was an exercise of the State's inherent power of taxation, the RTC invalidated the levy for violating the basic principle that taxes can only be levied for public purpose. On appeal, the Court of Appeals affirmed the RTC Decision, but deleted the award of attorney's fees.

The Court upheld the decision of the Court of Appeals as LOI No. 1465 failed to comply with the public purpose requirement for tax laws. As regards the argument of PPI that Fertiphil cannot seek a refund based on the Operative Fact Doctrine, the Court held:

The general rule is that an unconstitutional law is void; the doctrine of operative fact is inapplicable.

PPI also argues that Fertiphil cannot seek a refund even if LOI No. 1465 is declared unconstitutional. It banks on the **doctrine of operative fact, which provides that an unconstitutional law has**

an effect before being declared unconstitutional. PPI wants to retain the levies paid under LOI No. 1465 even if it is subsequently declared to be unconstitutional.

We cannot agree. It is settled that no question, issue or argument will be entertained on appeal, unless it has been raised in the court *a quo*. PPI did not raise the applicability of the doctrine of operative fact with the RTC and the CA. It cannot belatedly raise the issue with Us in order to extricate itself from the dire effects of an unconstitutional law.

At any rate, We find the doctrine inapplicable. **The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection. It has no legal effect. It is, in legal contemplation, inoperative as if it has not been passed.** Being void, Fertiphil is not required to pay the levy. All levies paid should be refunded in accordance with the general civil code principle against unjust enrichment. **The general rule is supported by Article 7 of the Civil Code, which provides:**

> **ART. 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary.**
>
> **<u>When the courts declare a law to be inconsistent with the Constitution, the former shall be void</u> and the latter shall govern.**

The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.

The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.

Here, We do not find anything iniquitous in ordering PPI to refund the amounts paid by Fertiphil under LOI No. 1465. It unduly benefited

from the levy. It was proven during the trial that the levies paid were remitted and deposited to its bank account. Quite the reverse, it would be inequitable and unjust not to order a refund. To do so would unjustly enrich PPI at the expense of Fertiphil. Article 22 of the Civil Code explicitly provides that "every person who, through an act of performance by another comes into possession of something at the expense of the latter without just or legal ground shall return the same to him." We cannot allow PPI to profit from an unconstitutional law. Justice and equity dictate that PPI must refund the amounts paid by Fertiphil.[13]

In this case, the general rule applies that an unconstitutional law is void, and produces no legal effect. As stated in the decision above, the doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. The said doctrine recognizes that the actual existence of a statute prior to a determination of unconstitutionality is an operative fact, and may have consequences which cannot always be ignored. The doctrine was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy[14] or would put in limbo the acts done by a municipality in reliance upon a law creating it in the case of ***Municipality of Malabang v. Benito***.[15]

In ***Municipality of Malabang v. Benito***, the Court ruled that Executive Order 386 creating the Municipality of Malabang is void, and respondent officials were permanently restrained from performing the duties and functions of their respective offices. Nevertheless, the Court stated there was no basis for respondent officials' apprehension that the invalidation of the executive order creating Balabagan would have the effect of unsettling many an act done in reliance upon the validity of the creation of that municipality, citing ***Chicot County Drainage District v. Baxter State Bank***, thus:[16]

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[13] Emphasis supplied.

[14] *Tan v. Barrios*, G.R. Nos. 85481-82, October 18, 1990, 190 SCRA 686.

[15] G.R. No. L-28113, March 28, 1969.

[16] 308 U.S. 371, 374 (1940).

x x x The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[17]

Therefore, based on the foregoing, any question on the validity of acts done before the invalidation of R.A. No. 9355 may be raised before the courts.

Lastly, movants-intervenors contended that the inhabitants of the Province of Dinagat Islands have expressed their will, through their votes in a plebiscite, to be a province; hence, the Court should uphold the will of the people and uphold the validity of R.A. No. 9355.

The contention does not persuade. The validity of R.A. No. 9355 creating the province of Dinagat Islands depends on its compliance with Section 10, Article X of the Constitution, which states:

SEC. 10. **No province, city, municipality, or *barangay* may be created**, divided, merged, abolished, or its boundary substantially altered, **except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected**.[18]

Although the political units directly affected by the creation of the Province of Dinagat Islands approved the creation of the

[17] *Municipality of Malabang v. Benito*, *supra* note 15, p. 540.

[18] Emphasis supplied.

said province, R.A. No. 9355 failed to comply with the criteria for the creation of the province contained in Section 461 of the Local Government Code; hence, it was declared unconstitutional.

As cited in the Resolution dated May 12, 2010, ***Tan v. Comelec***[19] held:

> x x x [T]he fact that such plebiscite had been held and a new province proclaimed and its officials appointed, the case before Us cannot truly be viewed as already moot and academic. Continuation of the existence of this newly proclaimed province which petitioners strongly profess to have been illegally born, deserves to be inquired into by this Tribunal so that, if indeed, illegality attaches to its creation, the commission of that error should not provide the very excuse for perpetuation of such wrong. For this court to yield to the respondents' urging that, as there has been *fait accompli*, then this Court should passively accept and accede to the prevailing situation is an unacceptable suggestion. Dismissal of the instant petition, as respondents so propose is a proposition fraught with mischief. Respondents' submission will create a dangerous precedent. Should this Court decline now to perform its duty of interpreting and indicating what the law is and should be, this might tempt again those who strut about in the corridors of power to recklessly and with ulterior motives, create, merge, divide and/or alter the boundaries of political subdivisions, either brazenly or stealthily, confident that this Court will abstain from entertaining future challenges to their acts if they manage to bring about a *fait accompli*.

In view of the foregoing, the Court acted in accordance with its sound discretion in denying movants-intervenors' *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010* as the issues raised by them lacked merit or had already been resolved by the Court in its Decision dated February 10, 2010 and its Resolution dated May 12, 2010 denying respondents' Motion for Reconsideration. Moreover, under Section 2, Rule 19 of the Rules of Court, a motion to intervene may be filed at any time before rendition of judgment by the trial court. Since this case originated from an original action filed before this

[19] G.R. No. 73155, July 11, 1986, 142 SCRA 727, 741-742.

Court, the Court properly ruled that the appropriate time to file the motion-in-intervention is before and not after resolution of this case, citing ***Republic v. Gingoyon***.[20] Further, when movants-intervenors filed their *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010* on **June 18, 2010**, the Decision of February 10, 2010 had already become final and executory on **May 18, 2010**.

Aside from urging the Court to take a hard look on the first and second arguments raised by movants-intervenors, the *ponente* also wants the Court to consider his arguments for a reconsideration of the Decision in this case.

The *ponente* states that the Court must bear in mind that the central policy considerations in the creation of local government units are economic viability, efficient administration and capability to deliver basic services, and the criteria prescribed by the Local Government Code, *i.e.,* income, population and land area, are all designed to accomplish these results. He adds that in this light, Congress, in its collective wisdom, has debated on the relative weight of each of these three criteria, placing emphasis on which of them should enjoy preferential consideration. The *ponente* calls the attention of the majority to the primordial criterion of economic viability in the creation of local government units, particularly of a province, as intended by the framers of R.A. No. 7160.

The argument of the *ponente* has been discussed in his earlier Dissenting Opinion. It must be pointed out that from the congressional debates cited by the *ponente*, the framers of R.A. No. 7160 or the Local Government Code of 1991 finally came out with the end result, that is, Section 461 of R.A. No. 7160, which is the basis for the creation of a province. Section 461 of R.A. No. 7160 provides:

SEC. 461. ***Requisites for Creation***. — (a) **A province may be created if it has an average annual income, as certified by the**

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[20] G.R. No. 166429, February 1, 2006, 481 SCRA 457.

Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant **prices and either of the following requisites**:

(i) **a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau**; or

(ii) **a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office**:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province**.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.

Thus, the requisites for the creation of a province, as provided by R.A. No. 7160, is an annual income of not less than ₱20 million **and** either a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau, or a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office. As the wordings of the law are plain and clear, compliance with the territorial requirement or population requirement cannot be made light of or disregarded.

In this case, R.A. 9355 creating the Province of Dinagat Islands failed to comply with either the territorial or the population requirement of the Local Government Code. The Court stated in its Resolution dated May 12, 2010, thus:

As the law-making branch of the government, indeed, it was the Legislature that imposed the criteria for the creation of a province as contained in Sec. 461 of the Local Government Code. No law has yet been passed amending Sec. 461 of the Local Government

Code, so only the criteria stated therein are the bases for the creation of a province. The Constitution clearly mandates that the criteria in the Local Government Code must be followed in the creation of a province; hence, any derogation of or deviation from the criteria prescribed in the Local Government Code violates Section 10, Art. X of the Constitution.

Further, the *ponente* states that the provisions of both R.A. No. 7160 and the Rules and Regulations Implementing the Local Government Code of 1991 (LGC-IRR) show that with respect to the creation of municipalities, component cities, and provinces, the three indicators of viability and projected capacity to provide services, *i.e.,* income, population, and land area, are provided for. He points out that the exemption from the land area requirement when the local government unit to be created consists of one (1) or more islands is expressly provided in Section 442 and Section 450 of R.A. No. 7160 and the LGC-IRR with respect to the creation of municipalities and component cities, respectively, but the exemption is absent in the enumeration of the requisites for the creation of a province under Section 461 of R.A. No. 7160, but is expressly stated under Article 9 (2) of the LGC-IRR.

The *ponente* opines that there does not appear any rhyme or reason why this exemption should apply to cities and municipalities, but not to provinces. He stated that considering the physical configuration of the Philippine archipelago, there is a greater likelihood that islands or groups of islands would form part of the land area of a newly-created province than in most cities or municipalities. According to the *ponente*, it is, therefore, logical to infer that the genuine legislative policy decision was expressed in Section 442 (for municipalities) and Section 450 (for cities) of R.A. No. 7160, but was inadvertently omitted in Section 461 (for provinces).

The *ponente* submits that when the exemption was expressly provided in Article 9(2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Section 461 of R.A. No. 7160 — and reflect the true legislative intent; thus, it would be in order for the Court to uphold the validity of Article 9(2), LGC-IRR.

The *ponente* also submits that Article 9(2) of the LGC-IRR amounts to an executive construction of the provisions, policies, and principles of R.A. No. 7160, entitled to great weight and respect. He contends that it is actually a detail expressly provided by the Oversight Committee to fill in the void, honest mistake and oversight committed by Congress in Section 461 of R.A. No. 7160, taking into account the spirit and intent of the law.

The *ponente*'s argument does not persuade. The Local Government Code took effect on January 1, 1992, so **19 years** have lapsed since its enactment. If the Legislature committed the "congressional oversight in Section 461 of R.A. No. 7160" as alleged by Justice Nachura, it would have amended Section 461, which is a function of Congress. Substantial "oversights" in the basic law, particularly as alleged with respect to Section 461 of R.A. No. 7160, cannot be corrected in the implementing rules thereof, as it is settled rule that the implementing rules of the basic law cannot go beyond the scope of the basic law.

Moreover, it should be pointed out that a province is "composed of a cluster of municipalities, or municipalities and component cities,"[21] and, therefore, has a bigger land area than that of a municipality and a city, as provided by law. It is noted that the former Local Government Code (*Batas Pambansa Blg*. 337) did not provide for a required land area in the creation of a municipality and a city, but provided for a required land area in the creation of a province, which is 3,500 square kilometers, now lessened to 2,000 square kilometers in the present Local Government Code. If only the income matters in the creation of a province, then there would be no need for the distinctions in the population and land area requirements provided for a municipality, city and province in the present Local Government Code. It may be stated that unlike a municipality and a city, the territorial requirement of a province contained in Section 461[22] of the Local Government Code follows the general rule in

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[21] Section 459, The Local Government Code of 1991.

[22] SEC. 461. ***Requisites for Creation***. — (a) **A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and <u>either</u> of the following requisites**:

Section 7, Chapter 2 (entitled *General Powers and Attributes of Local Government Units*) of the same Code, thus:

SEC. 7. ***Creation and Conversion*.—As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:**

(a) **Income**.—It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) **Population**.—It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) **Land area.—It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace**.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).[23]

(i) **a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or**

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province**.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.

[23] Emphasis supplied.

Moreover, the argument that Article 9(2) of the LGC-IRR amounts to an executive construction of the provisions, policies, and principles of R.A. No. 7160, entitled to great weight and respect, citing the case of ***Galarosa v. Valencia***,[24] has already been ruled upon in the Decision dated February 10, 2010, thus:

Further, citing *Galarosa v. Valencia*, the Office of the Solicitor General contends that the IRRs issued by the Oversight Committee composed of members of the legislative and executive branches of the government are entitled to great weight and respect, as they are in the nature of executive construction.

The case is not in point. In *Galarosa*, the issue was whether or not Galarosa could continue to serve as a member of the *Sangguniang Bayan* beyond June 30, 1992, the date when the term of office of the elective members of the *Sangguniang Bayan* of Sorsogon expired. Galarosa was the incumbent president of the *Katipunang Bayan* or Association of *Barangay* Councils (ABC) of the Municipality of Sorsogon, Province of Sorsogon; and was appointed as a member of the *Sangguniang Bayan* (SB) of Sorsogon pursuant to Executive Order No. 342 in relation to Section 146 of Batas Pambansa Blg. 337, the former Local Government Code.

Section 494 of the Local Government Code of 1991 states that the duly elected presidents of the *liga* [*ng mga barangay*] at the municipal, city and provincial levels, including the component cities and municipalities of Metropolitan Manila, shall serve as *ex officio* members of the *sangguniang bayan, sangguniang panglungsod, and sangguniang panlalawigan*, respectively. They shall serve as such only during their term of office as presidents of the *liga* chapters which, in no case, shall be beyond the term of office of the *sanggunian* concerned. The section, however, does not fix the specific duration of their term as *liga* president. The Court held that this was left to the by-laws of the *liga* pursuant to Article 211(g) of the Rules and Regulations Implementing the Local Government Code of 1991. Moreover, there was no indication that Sections 491 and 494 should be given retroactive effect to adversely affect the presidents of the ABC; hence, the said provisions were to be applied prospectively.

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[24] G.R. No. 109455, November 11, 1993, 227 SCRA 728.

The Court stated that there is no law that prohibits ABC presidents from holding over as members of the *Sangguniang Bayan*. On the contrary, the IRR, prepared and issued by the Oversight Committee upon specific mandate of Section 533 of the Local Government Code, expressly recognizes and grants the hold-over authority to the ABC presidents under Article 210, Rule XXIX. The Court upheld the application of the hold-over doctrine in the provisions of the IRR and the issuances of the DILG, whose purpose was to prevent a hiatus in the government pending the time when the successor may be chosen and inducted into office.

The Court held that Section 494 of the Local Government Code could not have been intended to allow a gap in the representation of the *barangays*, through the presidents of the ABC, in the *sanggunian*. Since the term of office of the *punong barangays* elected in the March 28, 1989 election and the term of office of the presidents of the ABC had not yet expired, and taking into account the special role conferred upon, and the broader powers and functions vested in the *barangays* by the Code, it was inferred that the Code never intended to deprive the *barangays* of their representation in the *sangguniang bayan* during the interregnum when the *liga* had yet to be formally organized with the election of its officers.

Under the circumstances prevailing in *Galarosa*, the Court considered the relevant provisions in the IRR formulated by the Oversight Committee and the pertinent issuances of the DILG in the nature of executive construction, which were entitled to great weight and respect.

Courts determine the intent of the law from the literal language of the law within the law's four corners. If the language of the law is plain, clear and unambiguous, courts simply apply the law according to its express terms. If a literal application of the law results in absurdity, impossibility or injustice, then courts may resort to extrinsic aids of statutory construction like the legislative history of the law, or may consider the implementing rules and regulations and pertinent executive issuances in the nature of executive construction.

In this case, the requirements for the creation of a province contained in Section 461 of the Local Government Code are clear, plain and unambiguous, and its literal application does not result in absurdity or injustice. Hence, the provision in Article 9(2) of the IRR exempting a proposed province composed of one or more islands from the land-area requirement cannot be considered an executive

construction of the criteria prescribed by the Local Government Code. It is an extraneous provision not intended by the Local Government Code, and is, therefore, null and void.

The *ponente* also stated that it may be well to remember basic policy considerations underpinning the principle of local autonomy, and cited Section 2, R.A. No. 7160, which provides:

> Sec. 2. *Declaration of Policy.* — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

Indeed, the policy of the State is that "the **territorial and political subdivisions of the State** shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals."

However, it must stressed that in the creation of the territorial and political subdivisions of the State, the requirements provided by the Local Government Code must also be complied with, which R.A. No. 9355 failed to do.

Further, the ponente states that consistent with the declared policy to provide local government units local autonomy, he submits that the territory, contiguity and minimum land area requirements for prospective local government units should be construed liberally in order to achieve the desired results. He adds that this liberal interpretation is more appropriate, taking into account the rules on construction of the LGC, *viz:*

> SEC. 5. *Rules of Interpretation.* — In the interpretation of the provisions of this Code, the following rules shall apply:
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> x x x x x x x x x

(c) The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community;

The *ponente* seeks for a liberal interpretation as regards the territorial requirement in the creation of a province based on the rules of interpretation of the general welfare provisions of the Local Government Code. General welfare is clarified in Section 16 of the Local Government Code, thus:

Sec. 16. *General Welfare*.—Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

The Local Government Code provides that it is "**[*t*]*he general welfare provisions in this Code which shall be liberally interpreted*** to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community." Nowhere is it stated therein that the provisions for the creation of a local government unit, the province in particular, should be liberally interpreted. Moreover, since the criteria for the creation of a province under the Local Government Code are clear, there is no room for interpretation, but only application.

To reiterate, the constitutional basis for the creation of a province is laid down in Section 10, Article X of the Constitution, which provides that no province may be created, divided, merged, abolished, or its boundary substantially altered, except in

accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. The criteria for the creation of a province are found in Section 461 of the Local Government Code. Moreover, Section 6 of the Local Government Code provides that "[a] local government unit may be created xxx by law enacted by congress in the case of a province xxx subject to such limitations and requirements prescribed in this Code."

Based on the criteria for the creation of a province provided for in Section 461 of the Local Government, the Court found that R.A. No. 9355 creating the Province of Dinagat Islands failed to comply with the population or territorial requirement; hence, R.A. No. 9355 was declared unconstitutional.

The Decision in this case was promulgated on February 10, 2010. The motions for reconsideration of the Decision was denied on May 12, 2010. The Decision of February 10, 2010 became final and executory on May 18, 2010, as evidenced by the Entry of Judgment[25] issued by the Clerk of Court. Movants-intervenors filed their *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010* only on June 18, 2010, or after the resolution of the case and one month after the Decision in this case already became final and executory. Hence, the Court properly denied the said motion.

The *ponente* contends that there is an imperative to grant the Urgent Motion to Recall Entry of Judgment filed on October 29, 2010 by movants-intervenors for the simple reason that the Entry of Judgment was prematurely issued on October 5, 2010 in view of the pendency of the movants-intervenor's motion for reconsideration of the July 20, 2010 Resolution, which was filed on September 7, 2010.

I cannot agree with such contention. Although Entry of Judgment was made on October 5, 2010, it must be borne in

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[25] *Rollo*, p. 1202.

mind that the Decision in this case became final and executory on May 18, 2010, as evidenced by the Entry of Judgment[26] issued by the Clerk of Court. If the Court follows Section 2, Rule 36 of the Rules of Court, the date of finality of the judgment is deemed to be the date of its entry, thus:

> Sec. 2. ***Entry of judgments and final orders***.—If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. **The date of finality of the judgment or final order shall be deemed to be the date of its entry.** The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment of final order has become final and executory.

The amendment in Section 2 above makes finality and entry simultaneous by operation of law, and eliminates the confusion and guesswork whenever the parties could not have access, for one reason or another, to the Book of Entries of Judgments.[27] It also avoids the usual problem where the physical act of writing out the entry is delayed by neglect or sloth.[28]

In addition, the Court properly denied on July 20, 2010 the movants-intervenors' *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010,* since it was filed after the resolution of the case and after the Decision in this case had become final and executory on May 18, 2010. With the denial of the *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010*, the movants-intervenors' did not have legal standing to intervene; hence, their motion for reconsideration of the July 20, 2010 Resolution has no bearing on the validity of the

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[26] *Id*. at 1202.

[27] Florenz D. Regalado, *Remedial Law Compendium*, Vol. I, Eight Revised Edition, © 2002, p. 381.

[28] *Id*.

Entry of Judgment that was recorded in the Book of Entries of Judgments on October 5, 2010. Therefore, the Entry of Judgment cannot be recalled on the ground of pendency of the movants-intervenor's motion for reconsideration of the July 20, 2010 Resolution.

Since movants-intervenors' *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010* was denied in the Resolution dated July 20, 2010, the motion for reconsideration of the July 20, 2010 Resolution filed on September 7, 2010 by movants-intervenors was recommended to also be denied, but has yet to be acted on by the Court.

Further, on October 22, 2010, respondent New Province of Dinagat Islands, represented by Governor Geraldine Ecleo-Villaroman, filed an *Urgent Omnibus Motion (To resolve Motion for Leave of Court to Admit Second Motion for Reconsideration and, to set aside Entry of Judgment)*. Respondent admitted that it filed the Motion for Leave of Court to Admit Second Motion for Reconsideration on May 26, 2010, twelve (12) days after receipt of the Resolution dated May 12, 2010 denying respondents' motion for reconsideration.

It should be pointed out that the Court has acted on respondent New Province of Dinagat Islands' Motion for Leave of Court to Admit Second Motion for Reconsideration and the aforesaid Motion for Reconsideration, which were filed on May 26, 2010 (after the Decision had become final and executory on May 18, 2010), in the Court's Resolution dated June 26, 2010. Treated as a second motion for reconsideration of the Decision, which is disallowed, the Court resolved to note without action the said motions in view of the Resolution dated May 12, 2010 denying the motions for reconsideration of the February 10, 2010 Decision. Section 2, Rule 52 of the Rules of Court states:

SEC. 2. *Second motion for reconsideration*.—No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

As the decision in this case became final and executory on May 18, 2010, the decision is unalterable. In ***Gomez v. Correa,***[29] the Court held:

> It is settled that when a final judgment is executory, it becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.
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> The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries in which case there is no prejudice to any party, and where the judgment is void.

To stress, the motion for reconsideration filed by movants-intervenors on the denial of the motion for intervention should have been denied since to grant the same would be tantamount to reopening a case which is already final. Worse, movants-intervenors are not even original parties to the present case and therefore are not in a position to file a motion to recall a judgment which is already final and executory.

In view of the foregoing, I maintain that the movants-intervenors' *Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010*, which was filed only on June 18, 2010 or after resolution of the case and after the Decision of February 10, 2010 had become final and executory on May 18, 2010, was properly denied in the Resolution dated July 20, 2010. Consequently, I maintain my stand that movants-intervenor's Motion for Reconsideration of the Resolution dated July 20, 2010, which motion was filed on September 7, 2010, be denied for lack of merit. Further, it is recommended that movants-intervenors' *Urgent Motion to Recall Entry of Judgment* filed

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[29] G.R. No. 153923, October 2, 2009, 602 SCRA 40, 46-47.

on October 29, 2010, and the *Omnibus Motion (To resolve Motion for Leave of Court to Admit Second Motion for Reconsideration and to set aside Entry of Judgment*) filed on October 22, 2010 by respondent New Province of Dinagat Islands, represented by Governor Geraldine Ecleo-Villaroman, be likewise denied for lack of merit.

EN BANC

[G.R. No. 189479. April 12, 2011]

JEROME JAPSON, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS MADE BY QUASI-JUDICIAL BODIES AND ADMINISTRATIVE AGENCIES WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE ARE ACCORDED GREAT RESPECT AND EVEN FINALITY BY THE APPELLATE COURTS.—** Factual findings made by quasi-judicial bodies and administrative agencies when supported by substantial evidence are accorded great respect and even finality by the appellate courts. This is because administrative agencies possess specialized knowledge and expertise in their respective fields. As such, their findings of fact are binding upon this Court unless there is a showing of grave abuse of discretion, or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record.
2. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; WHEN AN OFFICER OR EMPLOYEE IS DISCIPLINED, THE OBJECT SOUGHT IS THE IMPROVEMENT OF THE PUBLIC**

SERVICE AND THE PRESERVATION OF THE PUBLIC'S FAITH AND CONFIDENCE IN THE GOVERNMENT.— When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of the public service and the preservation of the public's faith and confidence in the government. In administrative cases, the injury sought to be remedied is not merely the loss of public money or property. More significant are the pernicious effects of such action on the orderly administration of government services. Acts that go against the established rules of conduct for government personnel bring harm to the civil service, whether they result in loss or not.

3. **ID.; ID.; ID.; DISHONESTY; DEFINED AS THE CONCEALMENT OR DISTORTION OF TRUTH IN A MATTER OF FACT RELEVANT TO ONE'S OFFICE OR CONNECTED WITH THE PERFORMANCE OF HIS DUTY.—** Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.

4. **ID.; ID.; ID.; MISCONDUCT; DEFINED.—** [M]isconduct is a transgression of some established or definite rule of action, is a forbidden act, is a dereliction of duty, is willful in character, and implies wrongful intent and not mere error in judgment. More particularly, it is an unlawful behavior by the public officer. The term, however, does not necessarily imply corruption or criminal intent.

5. **ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PREJUDICE TO THE SERVICE IS NOT ONLY THROUGH WRONGFUL DISBURSEMENT OF PUBLIC FUNDS OR LOSS OF PUBLIC PROPERTY.—** Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater damage comes with the public's perception of corruption and incompetence in the government.

6. **POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; PUBLIC SERVANTS MUST EXHIBIT AT ALL TIMES THE HIGHEST SENSE OF HONESTY AND INTEGRITY.—** Petitioner is reminded that a public servant must exhibit at all times the highest sense of honesty and integrity. The Constitution stresses that a public office is a public trust and public officers 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. These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.

APPEARANCES OF COUNSEL

Homer S. Alinsug for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J*.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated June 8, 2009 and the Resolution[2] dated September 9, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 104865. The CA affirmed the resolutions of the Civil Service Commission (CSC), finding petitioner Jerome Japson (Japson), former Senior Member Services Representative assigned at the Social Security System (SSS) office in Baguio City (SSS Baguio City), guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and imposing on him the penalty of dismissal.[3]

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Juan Q. Enriquez, Jr. and Antonio L. Villamor, *rollo*, pp. 37-59.

[2] *Id.* at 61-62.

[3] *Supra* note 1, at 56.

The antecedent facts, as found by the CSC and adopted by the CA, are as follows:

Records show that Japson became the subject of a series of inquiries conducted by the SSS linking him to a profiting venture involving the processing of claims for SSS death and funeral benefits while he was assigned at SSS Baguio City from 1997 to May 1998. The inquiry was spurred by an affidavit dated October 6, 1999 of Mina Balanag, who happened to assist her illiterate mother, Cat-an Paanos, in claiming, as beneficiary, the SSS death benefits of her deceased father, Kitos Paanos. She alleged that because she knew nothing of the steps for processing of claims for death benefits, a village mate referred her to spouses Boyet and Shirley Abuan [(Spouses Abuan)] who have been frequenting their village. The [S]pouses Abuans (sic) assured that her mother will receive the benefits in due time since Shirley has a relative working at the SSS Baguio City who also happened to be their neighbor at (sic) Baguio City. Later, she learned that this neighbor-relative turned out (sic) to be Shirley's cousin Japson.

In exchange for their help, the [S]pouses Abuan demanded a share equivalent to 10% of the SSS death benefits that will be awarded to Balanag's mother. She reposed her full trust on the Spouses Abuan that even her mother's address in the claim form reflected that of the Spouses Abuan's home at P-2-36 Gabriela Silang Brgy., Baguio City, although her mother really lives in Bila, Bokod, Benguet. After the claim was approved, the SSS issued a check in the amount of Php183,472.72. After it was cashed (sic), the spouses Abuan allegedly received more than what was originally agreed (sic) since aside from the P[hp]15,000.00 corresponding to their "commission," they demanded Php83,000.00 more, purportedly the asking fee of Japson and a certain Atty. Reynaldo Rodeza, who were instrumental for the release of the benefits. Reluctantly, they gave the amount for fear that the benefits awarded them might be withdrawn. An affidavit dated January 26, 2000[ ] was executed by Balanag's mother, Cat-an Paanos, to corroborate her allegations.

On the other hand, in his affidavit dated January 27, 2000, as well as in his testimony relative thereto, Erano F. Gaspar (Ireneo in the Transcript of his Testimony taken on June 6, 2000 before the SSS) alleged that he came to know Japson through Shirley Abuan after she convinced him to transfer his claim for his father's death benefits then pending at SSS Solano, Nueva Vizcaya, to SSS Baguio

City, intimating that Japson, who is her cousin, could guarantee its prompt release since he was assigned at the claims section there. A meeting with Japson was then arranged by Shirley after which she filed the claim on October 10, 1997. Sometime on (sic) November 1997, Japson informed Gaspar by telephone that a check in an amount of Php74,000.00 was already issued to him. On the same day, he went to Baguio City, where, accompanied by Japson, he retrieved (sic) the check at the Baguio Post Office. After opening an account at PNP (sic) Baguio and withdrawing a sum, Japson informed him that a machine error in the computation of his benefits resulted in an overpayment as he was supposed to receive Php54,000.00. Gaspar handed over the excess P[hp]20,000.00, which Japson promised to deliver personally to SSS Baguio City. In addition, he paid Japson Php2,000.00 for the assistance he (sic) rendered.

In response to the above complaints, the SSS conducted a series of investigation (sic) on the official transactions of Japson and uncovered details that raised its suspicion. First, the address of claimants to the death benefits of deceased SSS members Kitos Paanos, Warlito Costales and Adriano Castillo as well as the pension form of SSS retiree Jovita Resquer bore a common address: P-2-35 Gabriela Silang Brgy., Baguio City[,] which is the address of Japson. They found out, too, that Japson signed and acknowledged the receipt of checks which were issued to the beneficiaries of Paanos and Castillo. It was further disclosed that Japson committed lapses in procedure, namely, his failure to stamp "received" on the claim of funeral benefits of Costales; his having attested to the fact of death of Kitos Paanos even though he has no personal knowledge of the same and with apparent conflict of interest due to his assignment at the claims section; and the discovery that by (sic) as late as February 2000, he has yet to mail a check issued by the SSS way back on (sic) December 24, 1999. The investigators received reports, too, that he took P[hp]17,000.00 from the benefits awarded to one Minda Balucas.

Upon the recommendation of the investigating unit which found *prima facie* case to support the complaints, the SSS, through Carlos A. Arellano, then Chairman, President and Chief Executive Officer (CEO), formally charged Japson with Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and placed him under preventive suspension of ninety (90) days. After the parties submitted their respective pleadings, the formal hearings were held on June 6 and 7, 2000 and November 9, 2000, where Japson testified for his defense.

In his testimony which amplified his Counter-Affidavit/Answer to the Formal Charge, Japson who assisted claimants for death, disability and retirement claims when he was first assigned to the (sic) SSS Bangued[,] refuted the allegation that he took a hefty share from death and funeral benefits awarded to beneficiaries of SSS members referred to him by the [S]pouses Abuan or that he worked in concert with [S]pouses Abuan to profit from the claimants. First, in response to the allegation of Erano P. Gaspar, he recalled that his cousin, Shirley Abuan, who also happened to be his neighbor, told him that Gaspar was having difficulty in claiming the SSS benefits of his father when he filed his claim at SSS Solano branch in Nueva Vizcaya. Assessing that some documents required by [the] SSS Solano Branch are not necessary, he brought the papers instead to SSS Baguio City in order to speed up the processing of Gaspar's claim. Eventually, a check in the amount of Php74,000.00 was issued by the SSS after which he accompanied Gaspar to claim the check at the Baguio City Post Office. After Gaspar cashed (sic) the check, Japson told him matter-of-factly that due to machine error, the SSS overpaid him by Php20,000.00, producing a copy of the encoding sheet prepared by the Benefits Section which showed the correct computation. Gaspar gave him the excess amount for him to turn over to the SSS. Afterwards, they retired to Japson's house at Brgy. Gabriela Silang, Baguio City where they had a few rounds of drinks as it was his cousin's birthday. Gaspar insisted on giving him Php2,000.00 but he refused, saying that he does not expect any payment for his help more so as they are brothers of faith as both belong to *Iglesia ni Cristo*. Instead, Gaspar just spent the sum to buy food for their drinks. As to the Php20,000.00, Japson produced a (sic) SSS Special bank receipt dated February 16, 2000 as proof of remittance by Gaspar of the P[hp]20,000.00 excess amount and a Miscellaneous Payment Return Form bearing an identical date to show that Japson turned over the amount intact to the SSS.

With respect to the allegation that a number of applications for benefits suspiciously bore his address even though the applicants were not from Baguio City but in (sic) outlying provinces with SSS branches of their own, he explained that the [S]pouses Abuan, who were authorized by the claimants to file their application[s] and to follow-up their claims, might have placed the wrong information since they almost have an identical address (*sic*). He did not notice the error since he was accustomed to his old address which he wrote as Lower Hillside, Kennon Road, Baguio City. As to the case of Resquer, he pointed out that their address in the application clearly

showed P-2-45 Brgy. Gabriela Silang and not P-2-35 as claimed in the investigation report. He also denied that he kept the Php17,000.00 from the benefits awarded to Balucas. He insisted that the sum was only entrusted to him for safekeeping since Balucas was afraid to carry such amount when she traveled to Abra, showing as proof thereto a letter dated September 15, 1999 by Balucas acknowledging that Japson already returned the amount to her[,] coupled by a Certification dated September 15, 1999 from Abelardo Yogyog, Branch Head of the Abra Provincial Post Office, that the check corresponding to the benefits awarded to Balucas was delivered to Balucas by mail at her address [on] Harrison St., Zone 7, Bangued, Abra. Japson backed up his counter-allegations by producing affidavits both dated February 14, 2003 executed by Balucas and Resquer clearing him of any wrongdoing and lauding him for the invaluable assistance rendered them.[4]

A case for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service was filed against Japson before the SSS. On February 4, 2003, the SSS promulgated a decision finding Japson guilty on all counts.[5]

The SSS said that while there was nothing wrong *per se* with petitioner letting claimants use his home address for their claims, a perception of material gain is nonetheless indubitable. It pointed out that it was highly improbable for claimants from Isabela and Nueva Vizcaya, where there are also SSS branches, to file their claims in Abra. The most logical conclusion, the SSS said, is that they made their claims through the Spouses Abuan on the latter's assurance that these would be processed at the soonest possible time. Petitioner should have been wary of the number of claims brought to him by the Spouses Abuan, the SSS said, and he should have avoided these claims or referred them to the proper branch offices.[6] The SSS held that it is not necessary to show concrete proof of receiving consideration therefor, following the principle of *res ipsa loquitur*.[7]

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[4] *Id.* at 38-41.

[5] *Rollo*, pp. 120-134.

[6] *Id.* at 132-133.

[7] *Id.* at 133.

Petitioner's motion for reconsideration was denied in an Order dated May 12, 2003. He then appealed to the CSC.

In a resolution dated August 31, 2006, the CSC affirmed the SSS decision. The CSC underscored the link between petitioner and the Spouses Abuan, who were suspected of being fixers in the SSS and who allegedly ran a venture where they earned cuts or "commissions" from death, disability, and retirement benefits that were awarded to the SSS beneficiaries. The CSC found that the common link to the evidence ranged against Japson is the fact that he processed the various claims. The CSC also found credence in the following pieces of evidence: the statements under oath and testimonies of the principal complainants; the appearance of petitioner's address in the Death, Disability, and Retirement Forms of claimants; petitioner's attestation to the fact of death of several members, whose death benefits he himself processed; the fact that the claimants whom petitioner assisted were not from Baguio City; and the fact that these claimants were referred to him by the Spouses Abuan.[8]

The CSC held that while there is no strong evidence showing that Japson received, collected, or took a share of the benefits awarded to the claimants, he was still liable for the charges against him because his irregular conduct and indiscriminate judgment relative to the handling of the claims caused a serious breach in the integrity of the system observed by the SSS, as well as his having endangered the welfare of the public at large.[9]

Petitioner filed a motion for reconsideration, which was denied in a resolution dated June 23, 2008.[10]

Petitioner subsequently filed a Petition for Review under Rule 43 of the Rules of Court before the CA. The CA, on June 8, 2009, promulgated a Decision denying the petition and affirming the CSC's August 31, 2006 and June 23, 2008 resolutions.[11]

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[8] *Id.* at 214-215.

[9] *Id.* at 216.

[10] *Id.* at 95-100.

[11] *Supra* note 1, at 56.

The CA ruled that the CSC resolutions were anchored on substantial evidence.[12] The CA held that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of evidence and the credibility of witnesses, and its findings may only be set aside on a showing of grave abuse of discretion. The CA also noted that, on the face of the substantial evidence presented against him, petitioner proffered only denials and presented himself as sole witness during the administrative proceedings.[13]

Petitioner moved for reconsideration, but the same was denied in a Resolution dated September 9, 2009.

Thus, petitioner filed a Petition for Review on *Certiorari* before this Court on October 29, 2009. In a Resolution dated June 22, 2010, the Court dismissed the petition for failure of petitioner to obey a lawful order of the Court. Petitioner filed a motion for reconsideration of the Resolution, which the Court granted, and the petition was reinstated.

Petitioner argues that the CA erred in finding that he was an employee of the SSS, and not of a private corporation, at the time of the commission of the offense referred to in Gaspar's complaint. He further argues that where there are conflicting findings between the SSS and the CSC, the Court may make a review of the facts of the case.[14]

Petitioner claims that, at the time of the alleged recovery of ₱20,000.00 from Gaspar, he was still employed by the Development Bank of the Philippines (DBP) Service Corporation, although he was detailed at the SSS. Thus, for that offense, the most that the SSS could have done was to refer the matter to DBP for the proper disciplinary action.[15]

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[12] *Id.* at 45.

[13] *Id.* at 54.

[14] *Rollo*, p. 21.

[15] *Id.* at 74.

Petitioner emphasizes that he had no hand in filling out the forms for the claims subject of the case.[16] He points out that the Spouses Abuan did so. Moreover, there is no evidence to show that he specifically authorized the Spouses Abuan or any of the claimants involved to use his address.

Petitioner also highlights the CSC's finding that there was less than substantial evidence that he financially benefited from the Spouses Abuan's transactions. Thus, he argues that the imposition of the penalty is unfounded.[17]

Petitioner also harps on the SSS' standing "file anywhere" policy to counter the allegation of irregularity in the filing of claims of non-Baguio City residents before the SSS Baguio City branch where petitioner was assigned.[18] Likewise, he contends that there was no prejudice to the SSS since all claimants turned out to be qualified dependents/beneficiaries.[19] He posits that since the CSC found that he had not financially benefited from the transactions, he should not be penalized or administratively held liable and dismissed from the service.[20]

In its Comment, the CSC, through the Office of the Solicitor General, argues that the CA correctly upheld its (CSC's) findings. The CSC maintains that petitioner's irregular conduct left the SSS vulnerable to swindlers who may use the office as an unwitting instrument to foist their deceit on the hapless public.[21] It said that petitioner's irregular and indiscriminate judgment relative to the handling of claims caused a serious breach in the integrity of the system observed by the SSS, as well as his having endangered the welfare of the public at large.

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[16] *Id.* at 76.

[17] *Id.* at 77.

[18] *Id.* at 80.

[19] *Id.* at 81.

[20] *Id.* at 86.

[21] *Id.* at 256.

As to the question of whether there was financial gain, the CSC argues that the same is irrelevant.[22] Petitioner is guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service whether or not he gained from such acts, the CSC said.[23]

The CSC also insists that petitioner was already an employee of the SSS at the time of the commission of the offenses, since he was absorbed as a regular employee on May 27, 1998.[24] His failure to refer the matter to his superiors and keeping the money in his possession even after he was already absorbed as a regular employee of the SSS caused prejudice to the integrity of the agency, the CSC emphasized.[25]

The Court finds the petition bereft of merit; hence, the same is denied.

Factual findings made by quasi-judicial bodies and administrative agencies when supported by substantial evidence are accorded great respect and even finality by the appellate courts.[26] This is because administrative agencies possess specialized knowledge and expertise in their respective fields.[27] As such, their findings of fact are binding upon this Court unless there is a showing of grave abuse of discretion, or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record.[28]

The Court notes that, although there is some variance in the conclusion arrived at by the SSS and the CSC, their findings as

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[22] *Id.*

[23] *Id.* at 266.

[24] *Id.* at 267.

[25] *Id.*

[26] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 586-587.

[27] *Id.* at 588.

[28] *Letran Calamba Faculty and Employees Association v. National Labor Relations Commission*, G.R. No. 156225, January 29, 2008, 543 SCRA 26, 38.

to the facts of the case are the same. Both agencies found the evidence for the complainants credible and proved that petitioner committed the acts complained of. Moreover, the CA sustained these factual findings. The Court finds no reason to disturb these findings, and therefore adopts the same.

Petitioner makes much of the CSC's finding that he did not financially benefit from the transactions. However, whether or not petitioner gained any financial benefit is not relevant. Neither is the fact that the government did not actually lose money through incorrect disbursement of public funds.

When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of the public service and the preservation of the public's faith and confidence in the government.[29]

In administrative cases, the injury sought to be remedied is not merely the loss of public money or property. More significant are the pernicious effects of such action on the orderly administration of government services. Acts that go against the established rules of conduct for government personnel bring harm to the civil service, whether they result in loss or not.

Petitioner was charged with Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.

Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty.[30] It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.[31]

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[29] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, citing *Bautista v. Negado*, *etc., and NWSA*, 108 Phil. 283, 289 (1960).

[30] *Alfonso v. Office of the President*, G.R. No. 150091, April 2, 2007, 520 SCRA 64, 87, citing *Civil Service Commission v. Cayobit*, 457 Phil. 452, 460 (2003).

[31] *Concerned Citizen v. Gabral*, *Jr.,* 514 Phil. 209, 219 (2005).

On the other hand, misconduct is a transgression of some established or definite rule of action, is a forbidden act, is a dereliction of duty, is willful in character, and implies wrongful intent and not mere error in judgment.[32] More particularly, it is an unlawful behavior by the public officer.[33] The term, however, does not necessarily imply corruption or criminal intent.[34]

Petitioner's acts clearly reflect his dishonesty and grave misconduct. He was less than forthright in his dealings with the complainants. He allowed the Spouses Abuan to use his position to make their "clients" believe that he could give them undue advantage — over others without the same connection — by processing their claims faster. Likewise, his acts imply malevolent intent, and not merely error in judgment. He was aware of what the Spouses Abuan were doing and was complicit in the same. At the very least, he failed to stop the illegal trade, and that constitutes willful disregard of the laws and rules.

Taken together, all the circumstances, as found by the SSS and the CSC, show that petitioner committed acts of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.

Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater damage comes with the public's perception of corruption and incompetence in the government.

Petitioner is reminded that a public servant must exhibit at all times the highest sense of honesty and integrity. The Constitution stresses that a public office is a public trust and public officers 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. These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments.

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[32] *Osop v. Atty. Fontanilla*, 417 Phil. 724, 728-729 (2001).

[33] *Judge Cervantes v. Cardeño*, 501 Phil. 13, 18 (2005).

[34] *Office of the Court Administrator v. Duque*, 491 Phil. 128, 133 (2005).

They should be taken as working standards by all in the public service.[35]

WHEREFORE, the foregoing premises considered, the Petition is *DENIED* for lack of merit.

SO ORDERED.

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

EN BANC

[G.R. No. 191940. April 12, 2011]

PHILIPPINE CHARITY SWEEPSTAKES OFFICE BOARD OF DIRECTORS and REYNALDO P. MARTIN, *petitioners, vs.* **MARIE JEAN C. LAPID,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CASUAL EMPLOYEES; NOT COVERED BY SECURITY OF TENURE PROTECTION. — As stated in Rule III, Section 2(f) of the Omnibus Rules on Appointments and Other Personnel Actions: **f. Casual — issued only for essential and necessary services where there are not enough regular staff to meet the demands of the service."** Notably, the **Plantilla of Casual Appointment** appears and reads as follows: x x x Thus, by the nature of their employment, casual employees were deemed to be not covered by the security of tenure protection as they could be removed from the service at anytime, with or without cause.

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[35] *Civil Service Commission v. Cortez*, *supra* note 29, at 607.

2. ID.; ID.; ID.; TERMINATION; CASUAL EMPLOYEE CANNOT BE TERMINATED WITHOUT CAUSE. — [In] the recent case of *Moral,* x x x the Court resolved the issue of whether or not a shuttle bus driver could be terminated from his casual employment without cause. Pertinent portions of the said *en banc* Resolution reads: *Article IX (B) of the Constitution.* Sec. 2. x x x (3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law. x x x (6) Temporary employees of the Government shall be given such protection as may be provided by law. *The Civil Service Law.* Sec. 46. *Discipline: General Provisions*. — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process. Further, *Civil Aeronautics Administration v. IAC* held that "the mantle of protection against arbitrary dismissals is accorded to an employee even if he is a non-eligible and holds a temporary appointment." Hence, a government employee holding a **casual** or temporary employment **cannot be terminated** within the period of his employment **except for cause**. The Court further stated in *Moral* that since there was no evidence supporting the charge of gross neglect of duty on the part of respondent, the recommendation of the Office of Administrative Services (*OAS*) for his dismissal on the ground that he was a mere casual employee could not be sustained. The Court wrote that: **"x x x. Even a casual or temporary employee enjoys security of tenure and cannot be dismissed except for cause enumerated in Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations and other pertinent laws."**

3. ID.; ID.; ID.; GROUNDS FOR TERMINATION OF CASUAL EMPLOYEE OTHER THAN EXPIRATION OF CONTRACT; REQUIRES OBSERVANCE OF DUE PROCESS. — Despite this new ruling [in the case of moral] on casual employees, it is not the intention of the Court to make the status of a casual employee at par with that of a regular employee, who enjoys permanence of employment. The rule is still that casual employment will cease automatically at the end of the period unless renewed as stated in the Plantilla of Casual Employment. Casual employees may also be terminated *anytime* though subject to certain conditions or qualifications with reference to the abovequoted CSC Form No. 001. Thus, they may be laid-off *anytime* before the expiration of the

employment period provided any of the following occurs: ***(1)*** **when their services are no longer needed**; ***(2)*** **funds are no longer available**; ***(3)*** **the project has already been completed/finished**; or ***(4)*** **their performance are below par**. Equally important, they are entitled to due process especially if they are to be removed for more serious causes or for causes other than the reasons mentioned in CSC Form No. 001. This is pursuant to Section 2, Article IX(B) of the Constitution and Section 46 of the Civil Service Law. The reason for this is that their termination from the service could carry a penalty affecting their rights and future employment in the government.

4. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT OF CIVIL SERVANTS TO SECURITY OF TENURE, GUARANTEED. — Section 3(2), Article XIII of the Constitution guarantees the rights of ***all workers*** not just in terms of self-organization, collective bargaining, peaceful concerted activities, the right to strike with qualifications, humane conditions of work, and a living wage but also to ***security of tenure***. Likewise, Section 2(3), Article IX-B of the Constitution provides that "***no officer or employee of the civil service shall be removed or suspended except for cause provided by law***." Apparently, the Civil Service Law echoes this constitutional edict of security of tenure of the employees in the civil service. Thus, Section 46 (a) of the Civil Service Law provides that ***"no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process.***"

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioners.
I.C. Tario and Associates Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court filed by petitioners Philippine Charity Sweepstakes Office Board of Directors *(PCSO)* and Reynaldo P. Martin against

respondent Marie Jean C. Lapid *(Lapid).* The petition challenges: **(1)** the November 18, 2009 Decision[1] of the Court of Appeals *(CA)* granting the petition and ordering the reinstatement and retention of the respondent in the service until the expiration of her casual employment, unless she had been earlier dismissed for cause in another case; and **(2)** the April 13, 2010 Resolution[2] denying the Motion for Reconsideration of petitioners.

THE FACTUAL ANTECEDENTS

(*as recited by the Civil Service Commission and adopted by the CA*):

Marie Jean C. Lapid ['Lapid'], Casual Clerk (Teller), Philippine Charity Sweepstakes Office (PCSO), Bataan Provincial District Office, Balanga, Bataan, **appeals** the Decision of the PCSO, embodied in Board Resolution No. 340, Series of 2005, dated October 12, 2005, through the PCSO Board of Directors, which **found her guilty of Discourtesy** in the Course of Official Duties and **Grave Misconduct** and imposed on her the **penalty of Dismissal from the Service**.

The appealed Decision reads, in part, as follows:

> ***RESOLVED****, that the Board of Directors confirms, as it hereby confirms, the recommendation of the Assistant General Managers for On Line Lottery and Administration, and OIC Manager for Northern and Central Luzon, On Line Lottery Sector, the termination of Marie Jean Lapid, as Casual-Teller assigned at the Bataan Provincial District Office for Discourtesy in the Course of Official Duties and Grave Misconduct effective immediately subject to compliance with applicable Civil Service rules and regulations.*

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Records show that the present case is rooted on the Sworn Statement executed by Mr. Lolito O. Guemo, Chief Lottery Operations Officer,

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[1] *Rollo*, pp. 48-63. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justice Andres B. Reyes, Jr. and Associate Justice Marlene Gonzales-Sison, concurring.

[2] *Id.* at 65.

Philippine Charity Sweepstakes Office (PCSO) Bataan Provincial District on June 23, 2005. Said Sworn Statement documented an incident which allegedly occurred on June 17, 2005, wherein respondent-appellant Marie Jean C. Lapid, Casual Clerk (Acting Teller), confronted, badmouthed and shouted invectives at Mr. Guemo, in the presence of other employees and patients seeking assistance from the PCSO-Bataan Provincial District Office. The same document also included the filing of an administrative complaint against appellant, which read, as follows:

> *'8. That in view of the foregoing, I am filing an administrative charge against Ms. Marie Jean C. Lapid, designated Casual Teller for violation of civil service rules and regulations for Misconduct; Discourtesy of official function (sic)';*

Guemo's declaration in his sworn statement was also documented in the Memorandum sent by the former to Josefina Sarsonas, then OIC Manager of the PCSO Northern and Central Luzon Department, dated June 20, 2005. The said Memorandum informed Sarsonas of the incident which occurred in the PCSO-Bataan Provincial District Office on June 17, 2005. Pertinent portions of Guemo's Incident Report, are as follows:

> *'The facts of the case are as follows: Ms. Jean Lapid was heard crying for unknown reason. Minutes later, she confronted me at the table of Mr. Manuel Arazas, SLOO Accountant while we are discussing about the report to be submitted to the Commission on (sic) Audit. 'I asked Ms. Lapid if she had a problem.' Right then and there, she shouted at me with patients around who were seeking medical assistance. I told her to please calm down and asked her to discuss her problem in front of my table. I tried to give her a seat but she remained standing and again shouting at me and saying something like these (sic), 'Tawagin ninyo na ako sir na bastos wala akong pakialam at talagang bastos ako at magkakabastusan na tayo dito. Inaamin ko na ako ay bastos.' Pero mas bastos ka sa akin dahil tinanggalan ninyo ako ng telepono at iniusog ninyo ang mga lotto supplies malapit sa teller booth para si Tracy Anne ay hindi makagtrabaho (sic) doon. Pinapagamit ninyo sa kanya ang maliit na office table na ayaw naman niya. Then she continued saying with high tone without due respect to the undersigned*

and shouting bastos ka, bastos ka, while she was finger pointing at me.'

The foregoing incident report was also signed by six (6) employees of the PCSO-Bataan Provincial District Office, as witnesses. The information contained in the Incident Report and Sworn Statement of Guemo was also echoed in the incident report of Security Guard Jayson M. Enriquez, who was assigned to the PCSO-Bataan Provincial District Office at the time of the incident.

On **June 20, 2005**, Guemo sent a Memorandum to respondent-appellant Lapid, requiring her to explain in writing within seventy two (72) hours why no administrative charges should be filed against her as a result of the June 17, 2005 incident. Lapid was also furnished with a copy of the incident report. On June 24, 2005, respondent-appellant submitted her reply to Guemo's June 20, 2005 Memorandum. In respondent-appellant's reply she denied the events, as stated in Guemo's incident report, and gave her own version of the incident. Lapid also alluded to the filing of a case against Guemo with this Commission for harassment, insulting behavior, discourtesy and oppression.

The PCSO Legal Department, through Investigating Officer Atty. Victor M. Manlapaz, sent a Memorandum to Lapid on **June 27, 2005**, asking the latter to respond to the Affidavit-Complaint of Guemo. Respondent-appellant submitted her 'Answer, with Comment and Motion and Motion to Dismiss' on **July 19, 2005**. In her Answer, Lapid stated that Guemo's complaint against her must be dismissed on the ground that the said complaint does not conform to the essential requisites prescribed by Section 8 of the Uniform Rules in Administrative Cases in the Civil Service. She also asserted that the administrative offense of 'Discourtesy of Official Function' does not exist under Civil Service Rules. Complainant Guemo filed his reply to the Answer of respondent-appellant on July 29, 2005.

On **August 11, 2005**, the Legal Department of the PCSO submitted its recommendation to the PCSO General Manager and Board of Directors for the issuance of the Formal Charge against respondent-appellant for Discourtesy in the Course of Official Duties and Grave Misconduct. x x x.

x x x x x x x x x

The PCSO also submitted a copy of the Resolution of the Legal Department signed by Atty. Victor M. Manlapaz, Investigating Officer,

on the issuance of the Formal Charge, as well as an unsigned copy of the Formal Charge, with PCSO General Manager Rosario Uriarte as signatory. Both documents are dated **August 11, 2005**.

On August 31, 2005, Guemo, again, sent a Memorandum to Sarsonas, to report an incident which occurred on August 31, 2005 involving respondent-appellant. In the Incident Report, Guemo stated that on said date, between 4:10 to 4:20 in the afternoon, respondent-appellant, for no apparent reason or provocation, painted over her name, the name of Tracy Anne Ventura and that of Rolando S. Manlapid in the Organizational Chart of the PCSO-Bataan Provincial District Office. During the said incident, respondent-appellant shouted within the hearing of those present that Guemo ordered her to paint over the name of Manlapid. She also shouted threats and invectives against Guemo. Another incident involving respondent-appellant took place on October 6, 2005, where the latter caused a scene in the office. The incident was again witnessed by her co-employees and some of them also signed as witnesses in the Incident Report that Guemo wrote to PCSO General Manager Rosario C. Uriarte.

In **Resolution No. 340, Series of 2005 dated October 12, 2005**, the PCSO Board of Directors **resolved to confirm the recommendation to terminate** the services of Marie Jean Lapid due to **Discourtesy in the Course of Official Duties and Grave Misconduct**. Respondent-appellant received her Notice of Termination from Reynaldo P. Martin, OIC-Regional Operations Manager of the PCSO on October 17, 2005 with a copy of the PCSO Board Resolution which contained the board decision to terminate her services. Respondent-appellant moved for reconsideration of the said decision of the PCSO Board on October 20, 2005. The same was denied on January 6, 2006.[3]

Lapid appealed to the Civil Service Commission *(CSC)*. The CSC, in its Resolution No. 070396 dated March 6, 2007,[4] dismissed respondent's appeal. Thus:

Records clearly show that respondent-appellant was never formally charged for the administrative offense of Discourtesy in the Course of Official Duties and Grave Misconduct, for which she was dismissed from service. PCSO's vain attempt to remedy their lapse with the

[3] *Id.* at 49-53.

[4] *Id.* at 96-104.

submission of the copy of the unsigned Formal Charge with their Comment must be censured. However, PCSO's failure to observe due process is irrelevant in this present case and the real issue for the Commission's determination is the termination of Lapid's casual employment.

Based on the status of Lapid's employment [as] a casual employee, this **Commission finds this present appeal moot and academic** and **all proceedings conducted pursuant to the aforementioned incidents**, **bereft of any legal effects**.

The **Revised Omnibus Rules on Appointments and Other Personnel Actions** which is implemented in **CSC Memorandum Circular No., 40 (sic), s. 1998** provides a definition of a casual employment in **Rule III, Section 2(f)**, to wit:

> *'f. Casual — issued only for essential and necessary services where there are not enough regular staff to meet the demands of the service.'*

Further, the fact that Lapid was employed by the PCSO as a casual employee, means that she does not enjoy security of tenure. Lapid's services are terminable anytime, there being no need to show cause. **Lapid's allegations that there is no substantial evidence** to sustain the finding of her guilt for Grave Misconduct and her dismissal from the service **is irrelevant** in the present case **as she is a casual employee, without any security of tenure.** Hence, she may be separated from service at any time (***Erasmo vs. Home Insurance and Guaranty Corporation*, 38 SCRA 122**).

This Commission, in **RODRIGO, Filma A., CSC Resolution No. 011947 dated September 10, 2001**, cited in **LECCIO, Nemia E., CSC Resolution No. 030858 dated August 8, 2003**, ruled as follows:

> *'The fact that she was in the employ of the municipal government as a casual employee, which she admitted in her appeal, means that she enjoys no tenurial security granted by the Constitution. Her services are terminable anytime, there being no need to show cause. Her invocation of alleged political motivation or color underlying her ouster cannot afford her any relief for the same does not alter the fact that hers was a casual employment, devoid of security of tenure.'*

x x x *x x x* *x x x*

WHEREFORE, the present administrative case against Marie Jean C. Lapid is hereby declared **MOOT AND ACADEMIC**. The appeal is hereby **DISMISSED** for lack of merit. [Emphases Supplied]

Respondent Lapid moved for a reconsideration. Her motion was, however, denied by the CSC in its Resolution No. 071401 dated July 24, 2007.[5]

Aggrieved, Lapid filed a petition for review (under Rule 43) before the CA presenting the sole issue of:

WHETHER OR NOT THE CIVIL SERVICE COMMISSION IS CORRECT IN RULING INSTEAD ON THE STATUS OF THE APPELLANT'S CASUAL EMPLOYMENT AND NOT ON THE ISSUE OF NON-OBSERVANCE OF DUE PROCESS IN THE TERMINATION OF APPELLANT'S SERVICES.[6]

Lapid claimed that the CSC erred in denying her appeal on the ground that she was a casual employee who was "without any security of tenure x x x and may be separated from service at any time." She argued that the CSC should have decided her appeal on the merits and resolved the issue of whether or not her termination from service was executed with due process. She further averred that "No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process."[7]

The CA agreed with Lapid. The CA ruled that while it was *previously* held that casual employees were not protected by security of tenure as they may be removed from the service with or without cause, a recent case decided by the Court held otherwise. In the said case, entitled, *Re: Vehicular Accident involving SC Shuttle Bus No. 3 with Plate No. SEG-357 driven by Gerry B. Moral, Driver II-Casual*,[8] the Court ruled that

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[5] *Id.* at 106-112.

[6] *Id.* at 55.

[7] *Id.*

[8] A.M. No. 2008-13-SC, November 19, 2008, 571 SCRA 352.

since there was no evidence supporting the charge against the respondent therein, it could not sustain his recommended dismissal on the mere ground that he was a casual employee, "for 'even a casual or temporary employee enjoys security of tenure and cannot be dismissed except for cause enumerated in Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations and other pertinent laws.'"[9] Absent, therefore, a proven cause to dismiss, the CA held that Lapid was dismissed without cause as contemplated in law.

Regarding the question of "due process," Lapid argued that she was denied her right thereto because the charges against her were not duly proven. The supposed Formal Charge was unsigned and, worse, it was not served on her. No formal investigation was ever conducted on her case.[10]

The CA again ruled for Lapid and held that she was denied due process. The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the instant petition is **GRANTED**. Petitioner is ordered **REINSTATED** and **RETAINED** in the service until the expiration of her casual employment, unless she has been earlier dismissed for cause in another case.
>
> SO ORDERED.[11]

Not in conformity, petitioners now seek relief from this Court *via* this petition anchored on the sole ground that:

> THE COURT OF APPEALS GRAVELY ERRED IN GRANTING RESPONDENT'S PETITION, IN EFFECT, REVERSING THE CIVIL SERVICE COMMISSION'S RESOLUTIONS.[12]

Preliminarily, there is a need to ascertain the meaning and essence of the term "casual employee." As stated in Rule III, Section 2(f) of the Omnibus Rules on Appointments and Other Personnel Actions:

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[9] *Rollo*, pp. 57-58.

[10] *Id.* at 58.

[11] *Id.* at 63.

[12] *Id.* at 36.

> **"f.Casual — issued only for essential and necessary services where there are not enough regular staff to meet the demands of the service."**

Notably, the **Plantilla of Casual Appointment** appears and reads as follows:

CSC Form No. 001

(Revised 1991)

Republic of the Philippines

____

____

PLANTILLA OF CASUAL APPOINTMENT

Source of Funds:________________

Department/Division: _________ Date Prepared by HRMO:_________

Name of Appointee/s	Position	Level	SG	Daily Wage	Period of Employment		If Renewal (indicate dates of previous employment)
					From	To	

The abovenamed personnel are hereby hired/appointed as **casuals** at the rate of compensation stated opposite their/his name(s) for the period indicated. It is understood that such employment will **cease automatically at the end of the period stated unless renewed**. Any or all of them may be laid-off any time before the expiration of the employment period **when their services are no longer needed** or **funds are no longer available** or **the project has already been completed/finished** or **their performance are below par**.

CERTIFICATION	CSC ACTION:
This is to certify that all requirement and supporting papers pursuant to CSC MC No. 40, s. 1998, as amended, have been complied with, reviewed and found in order.	_______ Approved _______ Disapproved
___________________ HRMO	
APPOINTING AUTHORITY:	
______________________ Name/Position	__________________ Head CSC Field Officer
______________________ Date	__________________ Date Signed

[Emphasis Supplied]

Thus, by the nature of their employment, casual employees were deemed to be not covered by the security of tenure protection as they could be removed from the service at anytime, with or without cause. Then came the recent case of Moral,[13] which was the basis of the CA Decision where the Court resolved the issue of whether or not a shuttle bus driver could be terminated from his casual employment without cause. Pertinent portions of the said *en banc* Resolution reads:

Article IX (B) of the Constitution

Sec. 2. x x x

(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

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[13] *Supra* note 8.

x x x x x x x x x

(6) Temporary employees of the Government shall be given such protection as may be provided by law.

The Civil Service Law

Sec. 46. *Discipline: General Provisions*. — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process.

Further, *Civil Aeronautics Administration v. IAC* held that "the mantle of protection against arbitrary dismissals is accorded to an employee even if he is a non-eligible and holds a temporary appointment."

Hence, a government employee holding a **casual** or temporary employment **cannot be terminated** within the period of his employment **except for cause**. [Emphases supplied]

The Court further stated in *Moral* that since there was no evidence supporting the charge of gross neglect of duty on the part of respondent, the recommendation of the Office of Administrative Services (*OAS*) for his dismissal on the ground that he was a mere casual employee could not be sustained. The Court wrote that:

"x x x. Even a casual or temporary employee enjoys security of tenure and cannot be dismissed except for cause enumerated in Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations and other pertinent laws." [Emphasis Supplied]

Despite this new ruling on casual employees, it is not the intention of the Court to make the status of a casual employee at par with that of a regular employee, who enjoys permanence of employment.[14] The rule is still that casual employment will cease automatically at the end of the period unless renewed as stated in the Plantilla of Casual Employment. Casual employees may also be terminated *anytime* though subject to certain conditions or qualifications with reference to the abovequoted

[14] See *Batangas State University v. Bonifacio*, G.R. No. 167762, December 15, 2005, 478 SCRA 142, 148.

CSC Form No. 001. Thus, they may be laid-off *anytime* before the expiration of the employment period provided any of the following occurs: ***(1)*** **when their services are no longer needed**; ***(2)*** **funds are no longer available**; ***(3)*** **the project has already been completed/finished**; or ***(4)*** **their performance are below par**.

Equally important, they are entitled to due process especially if they are to be removed for more serious causes or for causes other than the reasons mentioned in CSC Form No. 001. This is pursuant to Section 2, Article IX(B) of the Constitution and Section 46 of the Civil Service Law. The reason for this is that their termination from the service could carry a penalty affecting their rights and future employment in the government.

In the case at bench, the action of petitioners clearly violated Lapid's basic rights as a casual employee. As pointed out by the CSC itself, Lapid was NEVER formally charged with the administrative offenses of Discourtesy in the Course of Official Duties and Grave Misconduct. According to the CSC, the Formal Charge, was even unsigned, and it categorically stated that PCSO failed to observe due process.[15]

Lapid moved for the reconsideration of Resolution No. 340.[16] In Resolution No. 401, Series of 2005,[17] the Board of Directors of PCSO, upon the recommendation of the Assistant General Manager for Online Lottery Sector and the Manager of the Northern and Central Luzon, denied said motion for reconsideration. It was only in the said resolution that it was *belatedly* stated that her services was no longer needed per the list of Plantilla of Casual Appointment. This was an empty statement, however, as this was not substantiated.

Section 3(2), Article XIII of the Constitution guarantees the rights of ***all workers*** not just in terms of self-organization, collective bargaining, peaceful concerted activities, the right to

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[15] *See rollo*, p. 103.

[16] *Id.* at 70-72.

[17] *Id.* at 73.

strike with qualifications, humane conditions of work, and a living wage but also to ***security of tenure***. Likewise, Section 2(3), Article IX-B of the Constitution provides that "***no officer or employee of the civil service shall be removed or suspended except for cause provided by law***."[18] Apparently, the Civil Service Law echoes this constitutional edict of security of tenure of the employees in the civil service. Thus, Section 46 (a) of the Civil Service Law provides that ***"no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process."***[19] [Emphases supplied]

As earlier stated, the CSC itself found that Lapid was denied due process as she was *never* formally charged with the administrative offenses of Discourtesy in the Course of Official Duties and Grave Misconduct, for which she was dismissed from the service. To somehow remedy the situation, the petitioners mentioned in their Memorandum before the CA that there was no reason anymore to pursue the administrative charge against Lapid and to investigate further as this was superseded by Memorandum dated September 14, 2005 recommending the termination of respondent Lapid's casual employment. They pointed out that this was precisely the reason why no Formal Charge was issued.

The September 14, 2005 Memorandum, however, was not an action independent of the administrative case which dispensed with the filing of a Formal Charge. The CA even quoted pertinent portions of the said Memorandum. Thus:

> Subject: Termination of Services of Ms. Marie Jean C. Lapid
>
> This is with reference to the two (2) complaints for multiple acts of Grave Misconduct and Discourtesy in the Course of official Duty filed by Mr. Lolito O. Guemo, CLOO, Bataan PDO against Ms. Marie Jean C. Lapid, casual employee of PDO Bataan.

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[18] See also *Civil Service Commission v. Magnaye, Jr.*, G.R. No. 183337, April 23, 2010.

[19] *Rollo*, p. 73.

1.) The 1st complaint was the subject of Memorandum dated August 11, 2005 of Legal Department recommending the filing of Formal Charge against subject employee for Discourtesy in the Course of Duties and Grave Misconduct committed on June 17, 2005. The Memo was forwarded to your office [on] August 18, 2005; and

2.) The 2nd complaint dated August 31, 2005 for Grave Misconduct and Discourtesy in the Course of official duties was filed against the same employee by the CLOO of Bataan PDO for disciplinary action.

As an immediate disciplinary action for her wanton behavior in the performance of duties and obligations which constitute violation of office and civil service rules, we respectfully recommend that her services as casual employee be terminated.[20]

WHEREFORE, the petition is *DENIED*. Accordingly, respondent Marie Jean C. Lapid is hereby allowed to continue rendering services as Casual Clerk (Teller) of the PCSO, Bataan Provincial District Office, Balanga City, Bataan, until the end of the term of her temporary employment unless she is earlier dismissed for cause in another case and after due process. She is also entitled to payment of backwages from the date of dismissal until the date of actual reinstatement. However, if the term of her employment has already expired, backwages shall be computed from the date of dismissal until the end of her period of employment under the terms of her contract as a casual employee.

SO ORDERED.

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

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[20] *Id.* at 22-23.

EN BANC

[G.R. No. 193846. April 12, 2011]

MARIA LAARNI L. CAYETANO, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and DANTE O. TINGA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; COURT HAS NO JURISDICTION, EVEN VIA SPECIAL CIVIL ACTION FOR *CERTIORARI*, TO REVIEW FINAL OR INTERLOCUTORY ORDER, EVEN FINAL RESOLUTION, OF A *DIVISION OF* THE COMELEC. —** Reviewing well-settled jurisprudence on the power of this Court to review an order, whether final or interlocutory, or final resolution of a division of the COMELEC, *Soriano* definitively ruled, thus: x x x Plainly, from the foregoing, the Court has no jurisdiction to review an order, whether final or interlocutory, even a final resolution of a division of the COMELEC. Stated otherwise, the Court can only review *via certiorari* a decision, order, or ruling of the COMELEC *en banc* in accordance with Section 7, Article IX-A of the Constitution. x x x True, the aforestated rule admits of exceptions as when the issuance of the assailed interlocutory order is a patent nullity because of the absence of jurisdiction to issue the same. Unfortunately for petitioner, none of the circumstances permitting an exception to the rule occurs in this instance. x x x [W]e refer petitioner to the cue found in *Soriano*, *i.e.*, "**[t]he aggrieved party can still assign as error the interlocutory order if in the course of the proceedings he decides to appeal the main case to the COMELEC *En Banc*.**"

2. **ID.; ID.; ID.; PREREQUISITES. —** The issuance of a special writ of *certiorari* has two prerequisites: (1) a 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 (2) there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

APPEARANCES OF COUNSEL

Romulo B. Macalintal & Edgardo L. Vistan II for petitioner.
The Solicitor General for public respondent.
Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before us is a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, assailing the Orders issued by public respondent Commission on Elections (COMELEC), through its Second Division, dated August 23, 2010[1] and September 7, 2010,[2] respectively. The two Orders were issued in relation to the election protest, docketed as EPC No. 2010-44, filed by private respondent Dante O. Tinga against petitioner Maria Laarni Cayetano.

In the automated national and local elections held on May 10, 2010, petitioner and private respondent were candidates for the position of Mayor of Taguig City. Petitioner was proclaimed the winner thereof on May 12, 2010, receiving a total of Ninety-Five Thousand Eight Hundred Sixty-Five (95,865) votes as against the Ninety-Three Thousand Four Hundred Forty-Five (93,445) votes received by private respondent.

On May 24, 2010, private respondent filed an Election Protest against petitioner before the COMELEC. Private respondent's protest listed election frauds and irregularities allegedly committed by petitioner, which translated to the latter's ostensible win as Mayor of Taguig City. On the whole, private respondent claims that he is the actual winner of the mayoralty elections in Taguig City.

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[1] *Rollo*, pp. 32-43.

[2] *Id.* at 44.

Posthaste, petitioner filed her Answer with Counter-Protest and Counterclaim on June 7, 2010. Petitioner raised, among others, the affirmative defense of insufficiency in form and content of the Election Protest and prayed for the immediate dismissal thereof.

On July 1, 2010, the COMELEC held a preliminary conference and issued an Order granting private respondent a period within which to file the appropriate responsive pleading to the Answer of petitioner. The COMELEC likewise stated that it will rule on the affirmative defenses raised by petitioner.

As previously adverted to, the COMELEC issued the assailed Preliminary Conference Order dated August 23, 2010, finding the protest filed by private respondent and counter-protest filed by petitioner to be sufficient in form and substance. Effectively, the COMELEC denied petitioner's affirmative defense of insufficiency in form and substance of the protest filed by private respondent. The Order reads:

WHEREFORE, finding the instant protest and the counter-protest to be sufficient in form and substance, the Commission (Second Division) hereby:

1. **DIRECTS** [private respondent] to make a cash deposit [of] **ONE MILLION SIX HUNDRED NINE THOUSAND FIVE HUNDRED PESOS (₱1,609,500.00)** to defray the expenses for the recount of the ballots as well as for other incidental expenses relative thereto pertaining to the **217 clustered protested precincts** composed of **1,073 established precinct[s]** at the rate of ₱1,500.00 for each precinct as required in Section 2 Rule II of COMELEC Resolution No. 8804 payable in three (3) equal installments every twenty (20) days starting within five (5) days from receipt hereof.

2. **DIRECTS** [petitioner] to make a cash deposit of **TWO MILLION EIGHT HUNDRED ELEVEN THOUSAND PESOS (₱2,811,000.00)** to defray the expenses for the recount of the ballots as well as for other incidental expenses relative thereto pertaining to the **380 protested clustered precinct[s]** composed of **1,874 established precincts** at the rate of ₱1,500.00 for each precinct as required in Section 2[,] Rule II of COMELEC Resolution No. 8804 payable in three (3) equal installments every twenty (20) days starting within five (5) days from receipt hereof.

3. **DIRECTS** the City Election Officer (EO) of Taguig City, to gather and collect the subject contested ballot boxes containing the ballots, and their keys from the City Treasurer of Taguig City and to deliver the same to ECAD, COMELEC, Intramuros, Manila, within fifteen (15) days from receipt of the ballot boxes from said Treasurer with prior notice to herein parties who may wish to send their respective duly authorized representatives to accompany the same, observing strict measures to protect the safety and integrity of the ballot boxes;

4. **DIRECTS** [private respondent] and [petitioner] to provide for the needed vehicle/s to the EO for the gathering and transportation of the subject contested ballot boxes. All expenses for the retrieval and transportation of the said ballot boxes shall be borne by both [private respondent] and [petitioner];

5. **AUTHORIZES** the City Election Officer to secure a sufficient number of security personnel either from the PNP or the AFP in connection with the afore-directed gathering and transportation of the subject ballot boxes;

6. **DIRECTS** [private respondent] to shoulder the travel expenses, per diems and necessary allowance of the COMELEC personnel, which include the PES and at most two (2) support staff, and the PNP/AFP personnel acting as security; and

7. **DIRECTS** the herein parties to shoulder the travelling expenses of their respective counsels and watchers.

8. **DIRECTS** [private respondent] in the protest proper and [petitioner] in the counter protest to bear the expenses for the rental of the Precinct Count Optical System (PCOS) machine that will be used for the authentication of the ballots as well as the payment for the information Technology Expert (IT Expert) who will assist in the authentication of the ballots, unless they are both willing to stipulate on the authenticity of the said ballots cast in connection with the May 10, 2010 National and Local Elections. **DIRECTS** further that in case [private respondent] agree[s] to stipulate on the authenticity of the ballots and [petitioner] raises the issue of authenticity, [petitioner] shall be the one to bear the fee for the rent of the PCOS machine as well as the service of the IT Expert.

9. **DIRECTS** the parties to file a manifestation whether they intend to secure photocopies of the contested ballots within a non-extendible period of five (5) days from receipt of this Order. No

belated request for the photocopying of ballots shall be entertained by this Commission (Second Division). The photocopying shall be done simultaneous with the recount of the ballots considering that the ballot box storage area is no longer near the recount room.

The pertinent Order for the constitution of Recount Committees and the schedule of recount shall be issued after the arrival of the subject ballot boxes and after the required cash deposits shall have been paid by [private respondent].

The Preliminary Conference is hereby ordered terminated. The parties are given three (3) days from receipt hereof to file their comment, suggestions or corrections, if any, to this Preliminary Conference Order. After the lapse of said period, no more comment, suggestion or correction shall be entertained, and this Preliminary Conference Order shall thereafter be valid and binding upon the parties.[3]

Thereafter, on August 31, 2010, petitioner filed a Motion for Reconsideration of the Preliminary Conference Order relative to the denial of her affirmative defenses. Private respondent filed a Comment and Opposition thereto. Consequently, the COMELEC issued the second assailed Order dated September 7, 2010, denying petitioner's Motion for Reconsideration.

Hence, this petition for *certiorari* positing the singular issue of whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to dismiss the protest of private respondent for insufficiency in form and content.

Not unexpectedly, private respondent refutes the allegations of petitioner and raises the procedural infirmity in the instant petition, *i.e.,* the power of this Court to review decisions of the COMELEC under Section 3,[4] Article IX-C of the Constitution,

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[3] *Supra* note 1, at 41-43.

[4] Section 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

pursuant to the leading case of *Repol v. COMELEC*.[5] Private respondent likewise counters that the petition fails to demonstrate grave abuse of discretion.

Adamantly, petitioner insists that the case at bar differs from *Repol* since the herein assailed Orders constituted a final order of the COMELEC (Second Division) on that particular issue. Moreover, petitioner maintains that the COMELEC *patently* committed grave abuse of discretion.

We cannot subscribe to petitioner's proposition. The landmark case of *Repol*, as affirmed in the subsequent cases of *Soriano, Jr. v. COMELEC*[6] and *Blanco v. COMELEC*,[7] leaves no room for equivocation.

Reviewing well-settled jurisprudence on the power of this Court to review an order, whether final or interlocutory, or final resolution of a division of the COMELEC, *Soriano* definitively ruled, thus:

> In the 2004 case of *Repol v. Commission on Elections*, the Court cited *Ambil* and held that this Court has no power to review *via certiorari* an interlocutory order or even a final resolution of a division of the COMELEC. However, the Court held that an exception to this rule applies where the commission of grave abuse of discretion is apparent on its face. In *Repol*, what was assailed was a *status quo ante* Order without any time limit, and more than 20 days had lapsed since its issuance without the COMELEC First Division issuing a writ of preliminary injunction. The Court held that the *status quo ante* Order of the COMELEC First Division was actually a temporary restraining order because it ordered Repol to cease and desist from assuming the position of municipal mayor of Pagsanghan, Samar and directed Ceracas to assume the post in the meantime. Since the *status quo ante* Order, which was qualified by the phrase "until further orders from this Commission," had a lifespan of more than 20 days, this Order clearly violates the rule that a temporary restraining order has an effective period of only 20 days and automatically expires

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[5] G.R. No. 161418, April 28, 2004, 428 SCRA 321.

[6] G.R. Nos. 164496-505, April 2, 2007, 520 SCRA 88.

[7] G.R. No. 180164, June 17, 2008, 554 SCRA 755.

upon the COMELEC's denial of preliminary injunction. The Court held:

"Only final orders of the COMELEC in Division may be raised before the COMELEC *en banc.* Section 3, Article IX-C of the 1987 Constitution mandates that only motions for reconsideration of *final decisions* shall be decided by the COMELEC *en banc,* thus:

SEC. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. *All such election cases shall be heard and decided in Division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.* (Emphasis supplied.)

Under this constitutional provision, the COMELEC *en banc* shall decide motions for reconsideration only of *"decisions"* of a Division, meaning those acts having a *final* character. Clearly, the assailed *status quo ante* Order, being interlocutory, should first be resolved by the COMELEC First Division *via* a motion for reconsideration.

Furthermore, the present controversy does not fall under any of the instances over which the COMELEC *en banc* can take cognizance of the case. Section 2, Rule 3 of the 1993 COMELEC Rules of Procedure provides:

SEC. 2. *The Commission En Banc*. — The Commission shall sit *en banc* in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of the Commission, or in all other cases where a division is not authorized to act, or where, upon a unanimous vote of all the Members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission *en banc*.

The present case is not one of the cases specifically provided under the COMELEC Rules of Procedure in which the COMELEC may sit *en banc*. Neither is this case one where a division is not authorized to act nor a case where the members of the First Division unanimously voted to refer the issue to the COMELEC *en banc*. Thus, the COMELEC *en banc* is not even the proper forum where Repol may bring the assailed interlocutory Order for resolution.

We held in *Ambil, Jr. v. Commission on Elections* that —

Under the existing Constitutional scheme, a party to an election case within the jurisdiction of the COMELEC in division [cannot] dispense with the filing of a motion for reconsideration of a decision, resolution or final order of the Division of the Commission on Elections because the case would not reach the Comelec *en banc* without such motion for reconsideration having been filed x x x.

Repol went directly to the Supreme Court from an interlocutory order of the COMELEC First Division. Section 7, Article IX of the 1987 Constitution prescribes the power of the Supreme Court to review decisions of the COMELEC, as follows:

Section 7. Each commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the commission or by the commission itself. Unless otherwise provided by this constitution or by law, any decision, order, or ruling of each commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

We have interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers. **The decision must be a final decision or resolution of the COMELEC *en banc*. The Supreme Court has no power to review *via certiorari* an interlocutory order or even a final resolution of a Division of the COMELEC. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.** (Emphasis supplied.)

However, this rule is not ironclad. In *ABS-CBN Broadcasting Corporation v. COMELEC,* we stated —

This Court, however, has ruled in the past that this procedural requirement [of filing a motion for reconsideration] may be glossed over to prevent a miscarriage of justice, when the issue involves the principle of social justice or the protection of labor, when the decision or resolution sought to be set aside is a nullity, or when the need for relief is extremely urgent and *certiorari* is the only adequate and speedy remedy available.

The Court further pointed out in *ABS-CBN* that an exception was warranted under the peculiar circumstances of the case since there was hardly enough opportunity to move for a reconsideration and to obtain a swift resolution in time for the 11 May 1998 elections. The same can be said in Repol's case. We rule that direct resort to this Court through a special civil action for *certiorari* is justified under the circumstances obtaining in the present case. (Emphasis supplied)

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The general rule is that a decision or an order of a COMELEC Division cannot be elevated directly to this Court through a special civil action for *certiorari*. Furthermore, a motion to reconsider a decision, resolution, order, or ruling of a COMELEC Division shall be elevated to the COMELEC *En Banc*. However, a motion to reconsider an interlocutory order of a COMELEC Division shall be resolved by the division which issued the interlocutory order, except when all the members of the division decide to refer the matter to the COMELEC *En Banc*.

Thus, in general, interlocutory orders of a COMELEC Division are not appealable, nor can they be proper subject of a petition for *certiorari*. To rule otherwise would not only delay the disposition of cases but would also unnecessarily clog the Court docket and unduly burden the Court. **This does not mean that the aggrieved party is without recourse if a COMELEC Division denies the motion for reconsideration. The aggrieved party can still assign as error the interlocutory order if in the course of the proceedings he decides to appeal the main case to the COMELEC *En Banc*.** The exception enunciated in *Kho* and *Repol* is when the interlocutory order of a COMELEC Division is a patent nullity because of absence of jurisdiction to issue the interlocutory order, as where a COMELEC Division issued a temporary restraining order without a time limit, which is the Repol case, or where a COMELEC Division admitted an answer with counter-protest which was filed beyond the reglementary period, which is the Kho case.

This Court has already ruled in *Reyes v. RTC of Oriental Mindoro*, that "it is the decision, order or ruling of the COMELEC *En Banc* that, in accordance with Section 7, Art. IX-A of the Constitution, may be brought to the Supreme Court on *certiorari*." The exception provided in *Kho* and *Repol* is unavailing in this case because unlike in *Kho* and *Repol,* the assailed interlocutory

orders of the COMELEC First Division in this case are not a patent nullity. The assailed orders in this case involve the interpretation of the COMELEC Rules of Procedure. Neither will the *Rosal* case apply because in that case the petition for *certiorari* questioning the interlocutory orders of the COMELEC Second Division and the petition for *certiorari* and prohibition assailing the Resolution of the COMELEC *En Banc* on the main case were already consolidated.[8]

Plainly, from the foregoing, the Court has no jurisdiction to review an order, whether final or interlocutory, even a final resolution of a division of the COMELEC. Stated otherwise, the Court can only review *via certiorari* a decision, order, or ruling of the COMELEC *en banc* in accordance with Section 7, Article IX-A of the Constitution.

Petitioner's assertion that circumstances prevailing herein are different from the factual milieu attendant in *Repol* has no merit. As stated in *Soriano*, "the general rule is that a decision or an order of a COMELEC Division cannot be elevated directly to this Court through a special civil action for *certiorari*." In short, the final order of the COMELEC (Second Division) denying the affirmative defenses of petitioner cannot be questioned before this Court even *via* a petition for *certiorari*.

True, the aforestated rule admits of exceptions as when the issuance of the assailed interlocutory order is a patent nullity because of the absence of jurisdiction to issue the same.[9] Unfortunately for petitioner, none of the circumstances permitting an exception to the rule occurs in this instance.

Finally, *certiorari* will not lie in this case.

The issuance of a special writ of *certiorari* has two prerequisites: (1) a 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

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[8] *Soriano, Jr. v. COMELEC*, *supra* note 6, at 102-107. (Emphasis supplied, citations omitted.)

[9] *Kho v. COMELEC*, 344 Phil. 878, 886 (1997).

to lack or excess of jurisdiction; and (2) there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[10]

Although it is not the duty of the Court to point petitioner, or all litigants for that matter, to the appropriate remedy which she should have taken, we refer her to the cue found in *Soriano*, *i.e.*, "**[t]he aggrieved party can still assign as error the interlocutory order if in the course of the proceedings he decides to appeal the main case to the COMELEC *En Banc*.**" In addition, the protest filed by private respondent and the counter-protest filed by petitioner remain pending before the COMELEC, which should afford petitioner ample opportunity to ventilate her grievances. Thereafter, the COMELEC should decide these cases with dispatch.

WHEREFORE, the petition is *DISMISSED*. Costs against petitioner.

SO ORDERED.

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

Corona, C.J., no part.

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[10] *See* RULES OF COURT, Rule 65, Sec. 1.

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— Must be strictly complied with. *(Id.)*

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— Elements of the crime are: (a) the accused sold and delivered a prohibited drug to another; and (b) he knew that what he had sold and delivered was a prohibited drug. *(Id.)*

— Prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment therefor. (People *vs*. Roble, G.R. No. 192188, April 11, 2011) p. 147

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— The requirements of due process are satisfied if the following conditions are present: (a) there is a court or tribunal clothed with judicial power to hear and determine the matter before it; (b) jurisdiction is lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (c) the defendant is

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EMPLOYMENT

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is guilty of acts inimical to the employer's interest resulting in loss of trust and confidence. *(Id.)*

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(Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

— In case of fraud, the existence of a fiduciary relation is an exception thereto. *(Id.)*

— Negative allegations need not be proved even if essential to one's cause of action or defense if they constitute a denial of the existence of a document the custody of which belongs to the other party. *(Id.)*

— The party upon whom the ultimate burden lies is to be determined by the pleadings, not by who is the plaintiff or the defendant. *(Id.)*

Prima facie — Means it is "sufficient to establish a fact or raise a presumption unless disproved or rebutted. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

Prima facie evidence — Denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

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INTERVENTION

Motion for — May be filed at any time before rendition of judgment by the trial court. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Brion, J., Dissenting Opinion*) p. 546

(Navarro vs. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Peralta, J., Dissenting Opinion*) p. 546

JUDGES

Administrative charges against a judge — Complainant has the burden of proving the allegations in the complaint with substantial evidence. (*Re*: Complaint of Concerned Members of Chinese Grocers Assn. Against Justice Soccoro B. Inting of the Court of Appeals, A.M. OCA IPI No. 10-177-CA-J, April 12, 2011) p. 179

— Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. *(Id.)*

JUDGMENTS

Entry of judgment — The date of the finality of judgment is deemed to be the date of its entry. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Peralta, J., Dissenting Opinion*) p. 546

Finality or immutability of judgment — Once a judgment becomes final and executory, it can no longer be disturbed, altered, or modified in any respect; exceptions. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Brion, J., Dissenting Opinion*) p. 546

JUDICIAL DEPARTMENT

Decision of cases — Courts will decide cases, otherwise moot and academic, if: (a) there is a grave violation of the Constitution; (b) there is an exceptional character of the situation and the paramount public interest is involved; (c) the constitutional issue raised requires formation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2011) p. 546

LAWS

Doctrine of operative fact — An exception to the general rule that an unconstitutional law is void and produces no effect, only applies as a matter of equity and fair play. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Peralta, J., Dissenting Opinion*) p. 546

— Recognizes that the actual existence of a statute prior to a determination of unconstitutionality is an operative fact, and may have consequences which cannot always be ignored. *(Id.)*

LOANS

Relation of contracting parties — The resulting relationship between a creditor and debtor in a contract of loan cannot

be characterized as fiduciary. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011) p. 212

Rights of creditor — Obligation to pay share of the net profits plus legal interest on the same until the loan is paid, proper as agreed upon even in the absence of a partnership. (Anton *vs*. Sps. Oliva, G.R. No. 182563, April 11, 2011) p. 58

— Party having a right to the share of the net profits, also have a right to the sales reports. *(Id.)*

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Creation of cities — Exemption from land area requirement should also be applicable to the creation of provinces. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2011) p. 546

Creation of a province — The exception created in the implementing rule exempting provinces composed of one or more islands from the minimum land area requirement is void for being ultra vires; exception. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Carpio, J., Dissenting Opinion*) p. 546

— Two of the three minimum requirements must be satisfied. *(Id.)*

General Welfare Provision — Not applicable in the provisions for the creation of a local government unit. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Peralta, J., Dissenting Opinion*) p. 546

Local government units — Population and land area are the pivotal factors in funding local government units. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Carpio, J., Dissenting Opinion*) p. 546

LOCAL GOVERNMENT CODE, AN ACT AMENDING SECTION 450 OF (R.A.NO. 900)

Income requirement — Must be strictly complied with and its non-compliance is an outright violation of the Constitution. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, April 12, 2011; *Carpio, J., Dissenting Opinion*) p. 496

— Neither arbitrary nor difficult to comply. *(Id.)*

— The imposition of income requirement of Php 100 Million from local sources was arbitrary. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, April 12, 2011) p. 496

MALVERSATION OF PUBLIC FUNDS OR PROPERTY

Commission of — Presumed where accountable public officer failed to have duly forthcoming any public fund or property with which he is chargeable, upon demand by any duly authorized officer. (Tubola, Jr. *vs*. Sandiganbayan, G.R. No. 154042, April 11, 2011) p. 1

— Elements of the crime are: (a) that the offender is a public officer; (b) that he had the custody or control of funds or property by reason of the duties of his office; (c) that those funds or property were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. *(Id.)*

MOTION FOR RECONSIDERATION

Second motion for reconsideration — As a rule, 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. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Brion, J., Dissenting Opinion*) p. 546

PARTIES TO CIVIL ACTIONS

Locus standi — For a party to have a locus standi, one must allege such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2011) p. 546

PLEADINGS

Specific denial — Allegations which are not specifically denied are deemed admitted. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Brion, J., Dissenting Opinion*) p. 212

— Modes of specific denial are: (a) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (b) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (c) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011) p. 212

PREJUDICIAL QUESTION

Concept — Cannot be appreciated where the subject actions are all civil in nature. (Strategic Alliance Dev't.Corp. *vs*. Star Infrastructure Dev't. Corp., Inc., G.R. No. 187872, April 11, 2011) p. 94

— Comes into play when a civil action and a criminal action are both pending and there exists in the former case an issue which must be preemptively resolved before the latter case may proceed since the resolution of the issue raised in the civil action that is resolved would be

determinative juris et de jure of the guilt or innocence of the accused in the criminal case. *(Id.)*

— Defined as that which arises in a case, a resolution of which is a logical cognizance of that which pertains to another tribunal. *(Id.)*

— Requires the concurrence of two essential requisites, to wit: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed. *(Id.)*

Writ of — Cannot be issued against acts already fait accompli but consummated acts which are continuing in nature may still be enjoined by the courts. (Strategic Alliance Dev't.Corp. *vs*. Star Infrastructure Dev't. Corp., Inc., G.R. No. 187872, April 11, 2011) p. 94

— May be issued upon the concurrence of the following essential requisites, to wit: (a) that the invasion of the right is material and substantial; (b) that the right of complainant is clear and unmistakable; and c) that there is an urgent and paramount necessity for the writ to prevent serious damage. *(Id.)*

— Mere offer of a counter bond does not suffice to warrant the dissolution of the preliminary writ of injunction issued to stop an illegal act. *(Id.)*

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG)

Ill-gotten wealth — A property acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011) p. 212

— Includes as, inter alia, shares of stock acquired through or as a result of the improper or illegal use of or the conversion of funds or properties owned by the Government or its branches, instrumentalities, enterprises, banks or financial institutions. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

— Requisites for forfeiture action of ill-gotten wealth are: (a) a subject defendant, which refers to the former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates; (b) an object or the ill-gotten wealth; (c) the mode of acquisition, through which the ill-gotten wealth was acquired directly or indirectly; and (d) prejudice to the government. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Brion, J., Dissenting Opinion*) p. 212

— Two concurring elements must be present, namely: (a) they must have "originated from the government itself," and (b) they must have been taken by former President Marcos, his immediate family, relative, and close associates by illegal means. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011) p. 212

Sequestration — A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or motu proprio when the Commission has reasonable grounds to believe that the issuance thereof is warranted. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

— Due to the tendency to impede or limit the exercise of propriety rights by private citizens, it is construed strictly against the State. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011) p. 212

— The absence of a prior determination by the PCGG of a prima facie basis for the sequestration order is a fatal defect to render the sequestration of a corporation and its properties void *ab initio*. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

PRESUMPTIONS

Regular performance of official duty — Applies in cases involving violations of the Comprehensive Dangerous Drugs Act (R.A. No. 9165). (People *vs*. Felipe, G.R. No. 191754, April 11, 2011) p. 132

PRE-TRIAL

Pre-trial brief — A party's statement in the pre-trial brief is not a mere proposal but a direct admission of what would support his/her material allegation. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Brion, J., Dissenting Opinion*) p. 212

— Parties are bound by the representations and statements in their pre-trial briefs. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Notice and replacement of lost duplicate certificate — The issuance of a new duplicate certificate may be filed by a person who is not the owner of the property provided he has interest in the property. (*Re*: Complaint of Concerned Members of Chinese Grocers Assn. Against Justice Soccoro B. Inting of the Court of Appeals, A.M. OCA IPI No. 10-177-CA-J, April 12, 2011) p. 179

Petition for the issuance of a new owner's duplicate copy of a Certificate of Title — The Land Registration Court has no jurisdiction to pass upon the question of actual ownership of the land covered by the lost owner's duplicate

copy of the Certificate of Title. (*Re*: Complaint of Concerned Members of Chinese Grocers Assn. Against Justice Soccoro B. Inting of the Court of Appeals, A.M. OCA IPI No. 10-177-CA-J, April 12, 2011) p. 179

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal property — May be liable for payment of indemnity imposed upon one spouse after the responsibilities enumerated under Article 161 of the Civil Code have been covered. (Dewara *vs*. Sps. Lamela, G.R. No. 179010, April 11, 2011) p. 35

— May not automatically be levied upon in an execution to answer for the obligation of one of the spouses. *(Id.)*

— Presumption that all property of the marriage belong to the conjugal partnership is not destroyed by registration by one spouse alone or that the spouses are separated-in-fact. *(Id.)*

PUBLIC CORPORATIONS

Government owned and controlled corporations — Include the United Coconut Planters Bank (UCPB). (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

PUBLIC OFFICERS AND EMPLOYEES

Conduct of — A public servant must display at all times the highest sense of honesty and integrity. (Japson *vs*. Civil Service Commission, G.R. No. 189479, April 12, 2011) p. 665

— Public officials and employees are enjoined to discharge their duties with utmost responsibility, integrity, and competence; any conduct contrary thereto would qualify as conduct unbecoming of a government employee. (Romero *vs*. Villarosa, Jr., A.M. No. P-11-2913, April 12, 2011) p. 196

Conduct prejudicial to the best interest of the service — Prejudice to the service is not only through wrongful disbursement

of public funds or loss of public property. (Japson *vs.* Civil Service Commission, G.R. No. 189479, April 12, 2011) p. 665

Discipline of officers and employees — When an officer or employee is disciplined, the object sought is the improvement of the public service and the preservation of the public's faith and confidence in the government. (Japson *vs.* Civil Service Commission, G.R. No. 189479, April 12, 2011) p. 665

Dishonesty — Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty; probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (Romero *vs.* Villarosa, Jr., A.M. No. P-11-2913, April 12, 2011) p. 196

— It is the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. (Japson *vs.* Civil Service Commission, G.R. No. 189479, April 12, 2011) p. 665

— Treated as a grave offense the penalty of which is dismissal from the service at the first infraction. (Romero *vs.* Villarosa, Jr., A.M. No. P-11-2913, April 12, 2011) p. 196

Fiduciary duty — Defined as a duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. (Rep. of the Phils. *vs.* Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

— The highest standard of duty implied by law. *(Id.)*

Grave abuse of authority — A grave offense punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from service for the second infraction. (Romero *vs.* Villarosa, Jr., A.M. No. P-11-2913, April 12, 2011) p. 196

— Defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; it is an act of cruelty, severity, or excessive use of authority. *(Id.)*

Misconduct — Defined as a transgression of an established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. (Japson *vs.* Civil Service Commission, G.R. No. 189479, April 12, 2011) p. 665

Prohibited acts — Under Article 216 of the Revised Penal Code, public officers are prohibited from directly or indirectly becoming interested in any contract or business in which it is his official duty to intervene. (Rep. of the Phils. *vs.* Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

— Under the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), public officers are prohibited from becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board,, committee, panel or group. *(Id.)*

RAPE

Commission of — Civil liabilities of accused, cited. (People *vs.* Olesco, G.R. No. 174861, April 11, 2011) p. 15

Qualified rape — Civil indemnity of accused; cited. (People *vs.* Relanes, G.R. No. 175831, April 12, 2011) p. 478

— Committed in case minority of the victim and her relationship with the accused had been alleged in the information and duly proved. *(Id.)*

Sweetheart theory — Must be sufficiently established by compelling evidence. (People *vs.* Olesco, G.R. No. 174861, April 11, 2011) p. 15

Use of force — Act of pulling the victim and covering her face with drug-laced handkerchief is synonymous with force. (People *vs*. Olesco, G.R. No. 174861, April 11, 2011) p. 15

SALES

Contract of sale — Inadequacy of the price *per se* will not rule out the transaction as one of sale. ((Dewara *vs*. Sps. Lamela, G.R. No. 179010, April 11, 2011) p. 35

SANDIGANBAYAN

Division in Sandiganbayan — The imposition of a heavier penalty against the Chairman of the Division and a lesser penalty against the other Members thereof is proper. (Assistant Special Prosecutor III Jamsani-Rodriguez *vs*. Justice Ong, A.M. No. 08-19-SB-J, April 12, 2011) p. 166

— Variance in the responsibilities of each and every Members of the Division is a sufficient justification for the differentiation in the individual liabilities. *(Id.)*

Jurisdiction — The matter of the legality and propriety of a sequestration is subject exclusively to judicial adjudication by the Sandiganbayan; its power does not include the power to seize in the first instance properties purporting to be ill-gotten. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

— The Sandiganbayan is bereft of jurisdiction to order the annotation of the four restrictive conditions on the relevant corporate books of San Miguel Corporation despite the lifting of the writs of sequestration. *(Id.)*

SHERIFFS

Duties of — As officers of the court and agents of the law, they are bound to use prudence, due care and diligence in the discharge of their official duties. (Romero *vs*. Villarosa, Jr., A.M. No. P-11-2913, April 12, 2011) p. 196

— Delay in the deposit of the final amount received by him and failure to faithfully account for the amounts he received

thru his failure to deliver the exact amounts, are a clear manifestation of conduct unbecoming a government employee, tantamount to grave abuse of discretion. *(Id.)*

— Sheriffs are not permitted to retain the money in their possession beyond the day when payment was made or to deliver the money collected directly to the judgment obligee. *(Id.)*

— Sheriffs must comply with their mandated ministerial duty to execute writs as speedily as possible. *(Id.)*

— Sheriffs must faithfully account for the money received and turned over to him. *(Id.)*

STATUTORY CONSTRUCTION

Construction — Statutes must be read as a whole, that each and every part must be considered in order to ascertain its meaning. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Del Castillo, J., Concurring Opinion*) p. 546

SUMMARY JUDGMENT

Genuine issue — Defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith, and patently unsubstantial so as not to constitute a genuine issue for trial. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011) p. 212

Motion for — A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and any doubt as to the existence of such issue is resolved against the movant. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011) p. 212

When rendered — A summary judgment is proper when there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011) p. 212

SUPREME COURT

Charges of flip-flopping — Baseless and unfair; rationale. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, April 12, 2011; *Abad, J., Concurring Opinion*) p. 496

Decision-making — The Supreme Court as a collegial body acts by consensus among its fifteen members. (Navarro *vs*. Exec. Secretary Ermita, G.R. No. 180050, April 12, 2012; *Abad, J., Concurring Opinion*) p. 546

Jurisdiction — The Supreme Court has no jurisdiction to review an order, whether final or interlocutory, even the final resolution of a Division of the Commission on Elections except as when the issuance of the assailed interlocutory order is a patent nullity because of the absence of jurisdiction to issue the same. (Cayetano *vs*. COMELEC, G.R. No. 193846, April 12, 2011) p. 694

TRUST

Constructive trust — A right of property, real or personal, held by one party for the benefit of another; that there is a fiduciary relation between a trustee and a cestui que trust as regards certain property, real, personal, money or choses in action. (Rep. of the Phils. *vs*. Sandiganbayan [First Division], G.R. No. 166859, April 12, 2011; *Carpio Morales, J., Dissenting Opinion*) p. 212

— Imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. *(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*. Relanes, G.R. No. 175831, April 12, 2011) p. 478

(People *vs*. Roble, G.R. No. 192188, April 11, 2011) p. 147

(People *vs*. Felipe, G.R. No. 191754, April 11, 2011) p. 132

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