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OF THE

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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. RTJ-09-2197. April 13, 2011]
(Formerly OCA-I.P.I. No. 08-3026-RTJ)

ANTONINO MONTICALBO, *complainant, vs.* **JUDGE CRESCENTE F. MARAYA, JR., Regional Trial Court, Branch 11, Calubian, Leyte,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; GROSS MISCONDUCT AND BRIBERY; A JUDGE CANNOT BE THE SUBJECT OF DISCIPLINARY ACTION FOR HIS ERRONEOUS ACTIONS, UNLESS IT CAN BE SHOWN THAT THEY WERE ACCOMPANIED BY BAD FAITH, MALICE, CORRUPT MOTIVES, OR IMPROPER CONSIDERATIONS; SUSTAINED. — In order to merit disciplinary action, it must be established that respondent's actions were motivated by bad faith, dishonesty or hatred or were attended by fraud, dishonesty or corruption. In the absence of such proof, the decision or order in question is presumed to have been issued in good faith by respondent judge. x x x In cases where a judge is charged with bribery or grave misconduct, bias or partiality cannot be presumed. Neither can bad faith or malice be inferred just because the judgment or order rendered by respondent is adverse to complainant. What constitutes bad faith has been expounded on in the case of *Sampiano v. Judge Indar*: "Bad faith does not simply

connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage." Even assuming for the sake of argument that respondent judge erred in issuing the questioned order, he cannot be held liable for his official acts, no matter how erroneous, for as long as he acted in good faith. A judge is not required to be faultless because to demand otherwise would make the judicial office untenable for no one called upon to try the facts or interpret the law in the administration of justice can be infallible. As a matter of policy, a judge cannot be subject to disciplinary action for his erroneous actions, unless it can be shown that they were accompanied by bad faith, malice, corrupt motives, or improper considerations.

2. ID.; ID.; ID.; KNOWINGLY RENDERING AN UNJUST JUDGMENT OR ORDER; THE BURDEN OF PROOF RESTS ON THE COMPLAINANT, WHO MUST BE ABLE TO SUPPORT AND PROVE BY SUBSTANTIAL EVIDENCE HIS ACCUSATIONS AGAINST RESPONDENT; SUBSTANTIAL EVIDENCE, DEFINED. — Before a judge can be held liable for deliberately rendering an unjust judgment or order, one must be able to show that such judgment or order is unjust and that it was issued with malicious intent to cause injustice to the aggrieved party. Well-established is the rule in administrative proceedings that the burden of proof rests on the complainant, who must be able to support and prove by substantial evidence his accusations against respondent. Substantial evidence, the quantum of proof required in administrative cases, is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Failure of the complainant to substantiate his claims will lead to the dismissal of the administrative complaint for lack of merit because, in the absence of evidence to the contrary, the presumption that a judge has regularly performed his duties will prevail.

3. ID.; ID.; ID.; DISMISSAL OF COMPLAINT FOR LACK OF MERIT; SUSTAINED. — Time and again, this Court has held that charges based on mere suspicion and speculation cannot be given credence. Complainant miserably failed to substantiate his allegations of grave misconduct and bribery. He merely alleged hollow suppositions to shore up his Complaint. Consequently, this Court has no other option except to dismiss the administrative complaint for lack of merit. Although the Court will never tolerate or condone any conduct, act or omission that would violate the norm of public accountability or diminish the people's faith in the judiciary, it will not hesitate to protect an innocent court employee against any groundless accusation or administrative charge which has no basis in fact or law. As succinctly put by Justice Quisumbing in the case of *Francisco v. Leyva*, "This Court will not shirk from its responsibility of imposing discipline upon employees of the Judiciary. At the same time, however, neither will we hesitate to shield the same employees from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice."

4. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS; USE OF INSULTING LANGUAGE AND UNFAIR CRITICISM IS A VIOLATION OF HIS DUTY AS A LAWYER TO ACCORD DUE RESPECT TO THE COURTS; CASE AT BAR. — The complainant has no basis in charging that respondent's "knowledge of law fell so short" and that he was remiss in his obligation to be familiar with the law which "even law students these days know such x x x." For this reason, counsel for complainant is reminded to choose his words carefully and refrain from hurling insults at respondent judge especially if, as in this instance, he is obviously mistaken in his reading of the law. His use of insulting language and unfair criticism is a violation of his duty as a lawyer to accord due respect to the courts. Canon 11 of the Code of Professional Responsibility requires that "a lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others."

5. POLITICAL LAW; ADMINISTRATIVE LAW; THE FILING OF AN ADMINISTRATIVE CASE AGAINST THE JUDGE IS NOT AN ALTERNATIVE TO THE OTHER JUDICIAL

REMEDIES PROVIDED BY LAW, NEITHER IS IT COMPLEMENTARY OR SUPPLEMENTARY TO SUCH ACTIONS; ELUCIDATED. — The filing of an administrative case against the judge is not an alternative to the other judicial remedies provided by law, neither is it complementary or supplementary to such actions. With regard to this matter, the case of *Flores v. Abesamis* is instructive: "As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (*i.e.*, error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (*i.e.*, whimsical, capricious, despotic exercise of power or neglect of duty, *etc.*) are inter alia the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, a petition for change of venue, as the case may be. Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed."

6. JUDICIAL ETHICS; THE CODE OF JUDICIAL CONDUCT; VIOLATION UPON FAILURE TO OFFER EXPLANATION FOR THE INCORRECT CITATION OF A CASE USED IN HIS DECISION; ADMONITION, PROPER. — A judge must be "the embodiment of competence, integrity and independence." The Code of Judicial Conduct also demands that he "be faithful to the law and maintain professional competence." While a judge may not be disciplined for error

of judgment without proof that it was made with a deliberate intent to cause an injustice, still he is required to observe propriety, discreetness and due care in the performance of his official duties. As such, he should always strive to live up to the strict standards of competence, integrity and diligence in public service necessary for one in his position. The case of *Lacanilao v. Judge Rosete* appropriately states that: "A judge should always be a symbol of rectitude and propriety, comporting himself in a manner that will raise no doubt whatsoever about his honesty. Integrity, in a judicial office is more than a virtue, it is a necessity." It is important to note that respondent did not offer any explanation for the incorrect citation of the said case in his Comment to the complaint against him. He should be admonished for his failure to address this issue, especially as it pertains to the proper execution of his office. Nonetheless, considering that this is the first time that respondent has been reported to have committed such carelessness, the Court will accord him leniency.

D E C I S I O N

MENDOZA, *J.*:

This administrative case stemmed from a verified Complaint dated September 24, 2008 filed by complainant Antonino Monticalbo charging respondent Judge Crescente F. Maraya, Jr. of the Regional Trial Court, Branch 11, Calubian, Leyte, with gross ignorance of the law, gross incompetence and grave abuse of authority thru false representation.[1]

Complainant Monticalbo is one of the defendants in a civil case for collection of a sum of money filed by Fatima Credit Cooperative against him and his wife before the 6th Municipal Circuit Trial Court of Calubian-San Isidro, Leyte *(MCTC)*.[2]

The case was dismissed by the said court in its February 1, 2008 Order on the ground that the representative of Fatima

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[1] *Rollo*, pp. 1-5.

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

Credit Cooperative had no authority to prosecute the case.[3] The MCTC, however, did not rule on the counterclaim of complainant Monticalbo for attorney's fees and litigation expenses. For said reason, he filed a motion for reconsideration which was, however, denied by the court.[4]

Aggrieved, complainant elevated the case to the Regional Trial Court, Branch 11, Calubian, Leyte *(RTC)*, where his appeal was docketed as Civil Case No. CN-89.[5] He then filed a motion for extension of time to file a memorandum on appeal, which was granted by respondent judge in his Order dated June 25, 2008.[6]

In his August 26, 2008 Order, respondent judge dismissed the appeal for having been filed out of time. He stated that:

> Under the rules on Summary Procedure which was applied to govern the proceedings of this case, a motion for reconsideration is a prohibited pleading. Being a prohibited pleading, it will not suspend the period of appeal. (*Jaravata vs. CA*, G.R. No. 85467, April 25, 1990, 3rd Division). Since the appealed Order was received by counsel for the defendants-appellants on February 13, 2008, the notice of appeal, not a motion for reconsideration, should have been filed within a period of 15 days which lapsed on February 29, 2008. As the Notice of Appeal was filed on March 31, 2008, the appeal was, therefore, filed out of time and the appealed Order has become final and executory. The lapse of the appeal period deprives the courts of jurisdiction to alter the final judgment (*Delgado vs. Republic*, 164 SCRA 347).[7]

Complainant Monticalbo imputes the following errors on the part of respondent judge: (1) respondent erred in ruling that Civil Case No. CN-89 is covered by the Rules on Summary Procedure, considering that the total claim of the plaintiff in the said case exceeded ₱10,000.00; (2) respondent, motivated

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[3] *Id.*

[4] *Id.* at 2.

[5] *Id.* at 12.

[6] *Id.* at 15.

[7] *Id.* at 16.

by bad faith and corruption, cited the non-existent case of *Jaravata v. Court of Appeals* in his questioned Order; and (3) respondent accepted bribes in the form of food from plaintiff cooperative in Civil Case No. CN-89, through Margarito Costelo, Jr., then Sheriff of the trial court presided over by respondent judge, and Chairman of the Board and President of the said cooperative.[8] Complainant further avers that he personally witnessed the respondent judge enjoying a drinking spree with Costelo and his other male staff members in a nipa hut annexed to the building of the trial court during office hours in the afternoons of July 9, 2008, August 6, 2008 and September 10, 2008.[9]

In his Comment and Manifestations dated December 29, 2008, respondent judge refutes all the accusations hurled by complainant against him. He explains that he decided to dismiss complainant's appeal because it was filed out of time under the Rules on Summary Procedure. This decision was made in the exercise of the appellate jurisdiction of the MCTC and of his sound discretion.[10] Secondly, he argues that complainant's accusation of bad faith and corruption is baseless and that the complaint was filed upon the urging of Atty. Alexander Lacaba, his counsel, in an attempt to get even with him (respondent judge) for having lost the appeal in the case.[11] Lastly, respondent denies having participated in any drinking spree with his staff members or Costelo, who has been prohibited by his doctor from drinking alcoholic beverages. He claims that he only eats his meals in the nipa hut because he has to refrain from eating in public eateries for security reasons.[12]

The administrative complaint was re-docketed as a regular administrative matter and referred to the Executive Justice of

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[8] *Id.* at 3.

[9] *Id.*

[10] *Id.* at 22.

[11] *Id.* at 23.

[12] *Id.*

the Court of Appeals, Cebu City Station, for raffle among the justices thereat for investigation, report and recommendation.[13]

On April 13, 2010, Associate Justice Edwin D. Sorongon issued his Report and Recommendation, the pertinent portion of which reads as follows:

> In sum, it is recommended that respondent Judge be ABSOLVED from the charge of grave misconduct and corruption. However, the citation of a non-existent case by the respondent Judge in his assailed order of dismissal is tantamount to a misrepresentation and therefore reflect poorly on his esteemed position as a public officer in a court of justice, it is therefore recommended that he be ADMONISHED AND STRICTLY WARNED that a repetition thereof will be more severely dealt with.[14]

The Court agrees with the findings of the Investigating Justice.

Grave Misconduct and Bribery

In order to merit disciplinary action, it must be established that respondent's actions were motivated by bad faith, dishonesty or hatred or were attended by fraud, dishonesty or corruption.[15] In the absence of such proof, the decision or order in question is presumed to have been issued in good faith by respondent judge.[16] This was emphasized in the case of *Balsamo v. Judge Suan*,[17] where the Court explained:

> The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. Thus, not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad

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[13] *Id.* at 38.

[14] *Id.* at 45.

[15] *Ang v. Judge Asis*, 424 Phil. 105, 115 (2002).

[16] *Planas v. Reyes*, 492 Phil. 288, 300 (2005), citing *Osorio v. Judge Dizon, et al.*, 469 Phil. 819 (2004).

[17] 458 Phil. 11 (2003).

faith or with deliberate intent to do an injustice. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[18]

In cases where a judge is charged with bribery or grave misconduct, bias or partiality cannot be presumed. Neither can bad faith or malice be inferred just because the judgment or order rendered by respondent is adverse to complainant.[19] What constitutes bad faith has been expounded on in the case of *Sampiano v. Judge Indar*:[20]

> Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.[21]

Before a judge can be held liable for deliberately rendering an unjust judgment or order, one must be able to show that such judgment or order is unjust and that it was issued with malicious intent to cause injustice to the aggrieved party.[22] Well-established is the rule in administrative proceedings that the burden of proof rests on the complainant, who must be able to support and prove by substantial evidence his accusations against respondent.[23] Substantial evidence, the quantum of proof required

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[18] *Id.* at 23, *citing Abdula v. Guiani,* 382 Phil. 757 (2000); *Rallos v. Gako, Jr.*, 385 Phil. 4 (2000).); *Calleja v. Santelices*, 384 Phil. 595 (2000)*; Guillermo v. Reyes, Jr.*, 310 Phil. 176 (1995).

[19] *Salcedo v. Bollozos*, A.M. No. RTJ-10-2236, July 5, 2010, 623 SCRA 27, 44.

[20] A.M. No. RTJ-05-1953, December 21, 2009, 608 SCRA 597.

[21] *Id.* at 613, citing *Planas v. Judge Reyes*, 492 Phil. 288 (2005).

[22] *Supra* note 15 at 116, citing *Naval v. Panday*, 341 Phil. 656 (1997).

[23] *Planas v. Judge Reyes*, 492 Phil. 288, 301 (2005), citing *Ong v. Judge Rosete*, 484 Phil. 102 (2004).

in administrative cases, is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[24] Failure of the complainant to substantiate his claims will lead to the dismissal of the administrative complaint for lack of merit because, in the absence of evidence to the contrary, the presumption that a judge has regularly performed his duties will prevail.[25]

In this case, complainant has nothing but mere assertions and conjectures to buttress his allegations of grave misconduct and bribery on the part of respondent who, if complainant is to be believed, accepted bribes of food and engaged in drinking sprees with court employees during office hours. Contrary to complainant's statement, the Investigating Justice found that respondent was attending to his cases during the dates when he allegedly had those drinking sessions.

Time and again, this Court has held that charges based on mere suspicion and speculation cannot be given credence.[26] Complainant miserably failed to substantiate his allegations of grave misconduct and bribery. He merely alleged hollow suppositions to shore up his Complaint. Consequently, this Court has no other option except to dismiss the administrative complaint for lack of merit.

Although the Court will never tolerate or condone any conduct, act or omission that would violate the norm of public

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[24] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011.

[25] *Ever Emporium, Inc. v. Judge Maceda*, 483 Phil. 323, 339 (2004), citing *Atty. Rex J.M.A. Fernandez v. Court of Appeals Associate Justices Eubolo G. Verzola, Martin S. Villarama, Jr., and Mario L. Guariña III*, 480 Phil. 1 (2004); *Leonides T. Cortes v. Sandiganbayan Justices Minita V. Chico-Nazario, Ma. Cristina G. Cortez-Estrada and Rodolfo G. Palattao*, 467 Phil. 155 (2004).

[26] *De Jesus v. Guerrero*, G.R. No. 171491, September 4, 2009, 598 SCRA 341, 350, citing *Manalabe v. Cabie*, A.M. No. P-05-1984, July 6, 2007, 526 SCRA 582, 589; *Adajar v. Develos*, 512 Phil. 9 (2005); *Ong v. Rosete*, 484 Phil. 102 (2004); *Datuin, Jr. v. Soriano*, 439 Phil. 592 (2002).

accountability or diminish the people's faith in the judiciary, it will not hesitate to protect an innocent court employee against any groundless accusation or administrative charge which has no basis in fact or law.[27] As succinctly put by Justice Quisumbing in the case of *Francisco v. Leyva*,[28]

> This Court will not shirk from its responsibility of imposing discipline upon employees of the Judiciary. At the same time, however, neither will we hesitate to shield the same employees from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.[29]

Gross Ignorance of the Law

Respondent judge can be held liable for gross ignorance of the law if it can be shown that he committed an error so gross and patent as to produce an inference of bad faith.[30] In addition to this, the acts complained of must not only be contrary to existing law and jurisprudence, but should also be motivated by bad faith, fraud, dishonesty, and corruption.[31]

Complainant Monticalbo insists that respondent judge erred in ruling that his counterclaim for attorney's fees and litigation expenses was covered by the Rules on Summary Procedure which provides that a motion for reconsideration is a prohibited pleading and will not toll the running of the period to appeal. To support his argument, complainant points out that his claim exceeds the ₱10,000.00 limit set in the Rule on Summary Procedure.

Complainant is mistaken.

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[27] *Sarmiento v. Salamat*, 416 Phil. 684, 694 (2001), citing *Re: Report on the Judicial Audit, RTC Br. 117, Pasay City*, 353 Phil. 190 (1998).

[28] *Francisco v. Leyva*, 364 Phil. 1, 4 (1999).

[29] *Id.*

[30] *Ora v. Judge Almajar*, 509 Phil. 595, 601 (2005), citing *Joaquin v. Madrid*, 482 Phil. 795 (2004).

[31] *Ocampo v. Bibat-Palamos*, A.M. No. MTJ-06-1655, March 6, 2007, 517 SCRA 480 487.

A cursory reading of Section 1 of the Revised Rule on Summary Procedure clearly shows that complainant's claim is covered by the said rule which reads:

> Section 1. Scope. — This rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction:
>
> A. Civil Cases
>
> x x x
>
> (2) All other cases, except probate proceedings, where the total amount of the plaintiff's claim does not exceed One hundred thousand pesos (₱100,000.00) or Two hundred thousand pesos (₱200,000.00) in Metropolitan Manila, exclusive of interest and costs.

Evidently, the complainant has been consulting old books. The rule now, as amended by A.M. No. 02-11-09-SC, effective November 25, 2002, has placed the ceiling at ₱100,000.00. As such, the complainant has no basis in charging that respondent's "knowledge of law fell so short" and that he was remiss in his obligation to be familiar with the law which "even law students these days know such x x x."[32]

For this reason, counsel for complainant is reminded to choose his words carefully and refrain from hurling insults at respondent judge especially if, as in this instance, he is obviously mistaken in his reading of the law. His use of insulting language and unfair criticism is a violation of his duty as a lawyer to accord due respect to the courts. Canon 11 of the Code of Professional Responsibility requires that "a lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others."

Moreover, even assuming for the sake of argument that respondent judge erred in issuing the questioned order, he cannot be held liable for his official acts, no matter how erroneous,

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[32] *Rollo*, pp. 3 and 28.

for as long as he acted in good faith.[33] A judge is not required to be faultless because to demand otherwise would make the judicial office untenable for no one called upon to try the facts or interpret the law in the administration of justice can be infallible.[34] As a matter of policy, a judge cannot be subject to disciplinary action for his erroneous actions, unless it can be shown that they were accompanied by bad faith, malice, corrupt motives, or improper considerations.[35]

The complainant should have elevated his grievance to the higher courts. The filing of an administrative case against the judge is not an alternative to the other judicial remedies provided by law, neither is it complementary or supplementary to such actions.[36] With regard to this matter, the case of *Flores v. Abesamis*[37] is instructive:

> As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (*i.e.*, error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (*i.e.*, whimsical, capricious, despotic exercise of power or neglect of duty, *etc*.) are inter alia the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, a petition for change of venue, as the case may be.

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[33] *Supra* note 18, citing *Castaños v. Escaño, Jr.*, 251 SCRA 174 (1995).

[34] *Tan v. Judge Adre*, 490 Phil. 555, 562 (2005), citing *Villanueva-Fabella v. Lee*, 464 Phil. 548 (2004).

[35] *Sps. Daracan v. Judge Natividad*, 395 Phil. 352, 365 (2000), citing *Guerrero v. Villamor*, 296 SCRA 88 (1998).

[36] *Salcedo v. Bollozos*, A.M. No. RTJ-10-2236, July 5, 2010, 623 SCRA 27, 42 citing *Bello v. Diaz*, 459 Phil. 214 (2003).

[37] 341 Phil. 299 (1997).

Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.[38]

Citation of non-existent case

The Court now deals with the charge that respondent judge cited a non-existent case — *Jaravata v. Court of Appeals* with case number *CA G.R. No. 85467* supposedly promulgated on *April 25, 1990* — in his questioned Order.

A search of available legal resources reveals that no such decision has been promulgated by the Supreme Court.

Besides, Supreme Court docket numbers do not bear the initials, "CA G.R." And, it cannot be considered a CA case because the respondent is the "Court of Appeals." This undoubtedly runs counter to the standard of competence and integrity expected of those occupying respondent's judicial position. A judge must be "the embodiment of competence, integrity and independence."[39] The Code of Judicial Conduct also demands that he "be faithful to the law and maintain professional competence."[40]

While a judge may not be disciplined for error of judgment without proof that it was made with a deliberate intent to cause an injustice, still he is required to observe propriety, discreetness

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[38] *Id.* at 312.

[39] *Code of Judicial Conduct*, Canon 1, Rule 1.01.

[40] *Code of Judicial Conduct*, Canon 3, Rule 3.01.

and due care in the performance of his official duties.[41] As such, he should always strive to live up to the strict standards of competence, integrity and diligence in public service necessary for one in his position.[42] The case of *Lacanilao v. Judge Rosete* appropriately states that: "A judge should always be a symbol of rectitude and propriety, comporting himself in a manner that will raise no doubt whatsoever about his honesty. Integrity, in a judicial office is more than a virtue, it is a necessity."[43]

It is important to note that respondent did not offer any explanation for the incorrect citation of the said case in his Comment to the complaint against him. He should be admonished for his failure to address this issue, especially as it pertains to the proper execution of his office.

Nonetheless, considering that this is the first time that respondent has been reported to have committed such carelessness, the Court will accord him leniency.

WHEREFORE, the complaint for Grave Misconduct and Corruption is hereby *DISMISSED*. For citing a non-existent case, however, respondent judge is *ADMONISHED* to observe due care in the performance of his functions and duties and *WARNED* that a repetition thereof would be dealt with more severely.

SO ORDERED.

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

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[41] *Dipatuan v. Judge Mangotara,* A.M. No. RTJ-09-2190, April 23, 2010, 619 SCRA 48, 56.

[42] *Lacanilao v. Judge Rosete*, A.M. No. MTJ-08-1702, April 8, 2008, 550 SCRA 542, 553.

[43] *Id.* at 552, citing *Office of the Court Administrator v. Barron*, 358 Phil. 12 (1998) and *Capuno v. Jaramillo*, A.M. No. RTJ-98-944, July 20, 1994, 234 SCRA 212, 232.

FIRST DIVISION

[G.R. No. 135715. April 13, 2011]

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, represented by MAGDANGAL B. ELMA, PCGG CHAIRMAN and ORLANDO C. SALVADOR AS CONSULTANT OF THE TECHNICAL WORKING GROUP OF THE AD-HOC COMMITTEE, *petitioners, vs.* **HONORABLE ANIANO A. DESIERTO AS OMBUDSMAN, PANFILO O. DOMINGO, CONRADO S. REYES, ENRIQUE M. HERBOZA, MOHAMMAD ALI DIMAPORO, ABDULLAH DIMAPORO and AMER DIANALAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY WHEN GRAVE ABUSE OF DISCRETION IS IMPUTED UPON THE OMBUDSMAN FOR DISMISSING THE COMPLAINT. — The remedy from an adverse resolution of the Ombudsman is a petition for *certiorari* under Rule 65 of the Rules of Court; what was filed with the Court, however, was a petition for review on *certiorari* under Rule 45. Nevertheless, the Court will treat this petition as one filed under Rule 65 since a reading of its contents shows that the Committee imputes grave abuse of discretion to the Ombudsman for dismissing the complaint. This was how we also treated the previous cases marred by the same procedural lapse, the latest of which is the 2009 *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto* (G.R. No. 135703).

2. CIVIL LAW; PRESCRIPTION OF ACTIONS; FACTORS TO BE CONSIDERED IN RESOLVING THE ISSUE OF PRESCRIPTION; LIMITATION ON PRESCRIPTION; WHEN APPLICABLE. — In resolving the issue of prescription, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted. At the outset, the provision found in

Section 15, Article XI of the 1987 Constitution that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, **shall not be barred by prescription,** laches or estoppels," has already been settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130140), where the Court held that the above cited constitutional provision "applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases."

3. CRIMINAL LAW; PRESCRIPTION OF CRIME; THE PERIOD OF PRESCRIPTION FOR THE CRIME COMMITTED IN 1976 AND PRIOR TO THE AMENDMENT OF REPUBLIC ACT NO. 3019 IS TEN (10) YEARS; *RATIONALE*. — Section 11of Republic Act No. 3019 as amended by *Batas Pambansa Blg.* 195, provides that the offenses committed under Republic Act No. 3019 shall prescribe in fifteen (15) years; prior to this amendment, however, under the old Republic Act No. 3019, this prescriptive period was only ten (10) years. In *People v. Pacificador,* the Court held that the longer prescriptive period of 15-years does not apply in crimes committed prior to the effectivity of *Batas Pambansa Blg.* 195, which was approved on 16 March 1982, because, not being favorable to the accused, it cannot be given retroactive effect. Considering that the alleged crime was committed in 1976, and in line with the Court's ruling in *Pacificador,* the prescription period should be ten (10) years.

4. ID.; ID.; PRESCRIPTION OF CRIME SHALL BEGIN TO RUN FROM THE DAY OF ITS COMMISSION; THE "BLAMELESS IGNORANCE" DOCTRINE, AS AN EXCEPTION; EXPLAINED. — The time as to when the prescriptive period starts to run for crimes committed under Republic Act No. 3019, a special law, is covered by Act No. 3326, Section 2. x x x Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the *"blameless ignorance"* doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action.

In other words, the courts would decline to apply the statute of limitations **where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action."** It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque* which became the cornerstone of our 1999 Decision in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130149), and the subsequent cases which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases, that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts. Corollary, it is safe to conclude that the prescriptive period for the crime which is the subject herein, commenced from the date of its discovery in 1992 after the Committee made an exhaustive investigation. When the complaint was filed in 1997, only five years have elapsed, and, hence, prescription has not yet set in. The *rationale* for this was succinctly discussed in the 1999 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans,* that "it was well-high impossible for the State, the aggrieved party, to have known these crimes committed prior to the 1986 EDSA Revolution, because of the alleged connivance and conspiracy among involved public officials and the beneficiaries of the loans." In yet another pronouncement, in the 2001 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130817), the Court held that during the Marcos regime, no person would have dared to question the legality of these transactions.

5. POLITICAL LAW; CONSTITUTIONAL LAW; OMBUDSMAN; FUNCTION; WHILE THE OMBUDSMAN HAS THE FULL DISCRETION TO DETERMINE WHETHER A CRIMINAL CASE IS TO BE FILED, THE COURT IS NOT PRECLUDED FROM REVIEWING THE OMBUDSMAN'S ACTION WHEN THERE IS GRAVE ABUSE OF DISCRETION. — True, the Ombudsman is a constitutionally created body with constitutionally mandated independence. Despite this, however, the Ombudsman comes within the purview of the Court's power of judicial review — a peculiar concept of Philippine Ombudsman, embodied in Article VIII, Section 1 of the 1987 Constitution — which serves as a safety

net against its capricious and arbitrary acts. Thus, in *Garcia-Rueda v. Pascasio*, the Court held that "while the Ombudsman has the full discretion to determine whether or not a criminal case is to be filed, the Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion." This is because, "while the Ombudsman enjoys, as it must, complete independence, it cannot and must not lose track of the law, which it is bound to uphold and obey." x x x The duty of the Ombudsman in the conduct of a preliminary investigation is to establish whether there exists probable cause to file information in court against the accused. A finding of probable cause needs only to rest on evidence showing that more likely than not, the accused committed the crime. Considering the quantum of evidence needed to support a finding of probable cause, the Court holds that the Ombudsman gravely abused its discretion when it dismissed the complaint against herein respondents.

6. CRIMINAL LAW; REPUBLIC ACT NO. 3019, AS AMENDED (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION UNDER SEC. 3 (3) AND SEC. 3 (9) THEREOF, DISTINGUISHED. — Applying *mutatis mutandis* G.R. No. 133756 in this petition, it is apparent that there can be liability for violation of Section 3(e) and (g) of Republic Act No. 3019. Violation of Section 3(e) of Republic Act No. 3019 requires that there be injury caused by giving unwarranted benefits, advantages or preferences to private parties who conspire with public officers. In contrast, Section 3(g) does not require the giving of unwarranted benefits, advantages or preferences to private parties, its core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; ELUCIDATED. — Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence only as may engender a well founded belief that an offense has been committed and that the accused is probably guilty thereof. The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Bausa Ampil Suarez Paredes & Bausa for Panfilo O. Domingo.
Perlas De Guzman Antonio Venturanza Quizon-Venturanza & Herbosa Law Firm for Enrique M. Herboza.

D E C I S I O N

PEREZ, *J.*:

This petition for review on *certiorari*[1] is one among the 17 cases filed before us by the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, charging public respondent Ombudsman Aniano A. Desierto (Ombudsman) for grave abuse of discretion, when, on the ground of prescription and insufficiency of evidence, he dismissed all of these cases then pending before him, including this case in OMB-0-97-1718.

The Facts

Respondents Mohammad Ali Dimaporo, Abdullah Dimaporo, and Amer Dianalan, were stockholders and officers of the Mindanao Coconut Oil Mills (MINCOCO), a domestic corporation established in 1974,[2] while respondents Panfilo O. Domingo, Conrado S. Reyes, Enrique M. Herboza, and Ricardo Sunga, were then officers of the National Investment and Development Corporation (NIDC).

On 10 May 1976, MINCOCO applied for a Guarantee Loan Accommodation with the NIDC for the amount of approximately ₱30,400,000.00, which the NIDC's Board of Directors approved on 23 June 1976.

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[1] Filed under Rule 45 of the Rules of Court, but treated by the Court as a Petition for *Certiorari* under Rule 65.

[2] Registered with the Philippine Securities and Exchange Commission on 30 July 1974. *Rollo,* p. 29.

The guarantee loan was, however, both undercapitalized and under-collateralized because MINCOCO's paid capital then was only ₱7,000,000.00 and its assets worth is ₱7,000,000.00.

This notwithstanding, MINCOCO further obtained additional Guarantee Loan Accommodations from NIDC in the amount of ₱13,647,600.00 and ₱7,000,000.00,[3] respectively.

When MINCOCO's mortgage liens were about to be foreclosed by the government banks due its outstanding obligations, Eduardo Cojuangco issued a memorandum dated 18 July 1983, bearing the late President Ferdinand E. Marcos' (President Marcos) marginal note, disallowing the foreclosure of MINCOCO's properties.[4] The government banks were not able to recover any amount from MINCOCO and President Marcos' marginal note was construed by the NIDC to have effectively released MINCOCO, including its owners, from all of its financial liabilities.[5]

The above mentioned transactions, were, however, discovered only in 1992 after then President Fidel V. Ramos (President Ramos), in an effort to recover the ill-gotten wealth of the late President Marcos, his family, and cronies, issued Administrative Order No. 13[6] creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans **(the Committee)**, with the Chairman of the Philippine Commission on Good Government (PCGG) as the Committee's head. The Committee was directed, *inter alia,* to inventory all behest loans, and identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for the granting of loans or who influenced the grant thereof.[7]

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[3] Petition for Review on *Certiorari* (hereafter, petition). *Id.* at 13.

[4] In 1983, MINCOCO sold all its shares to the United Coconut Mills (UNICOM), which retained control over the mothballed oil mills. Petition, *id.* at 14.

[5] Ombudsman Resolution. *Id.* at 31.

[6] Issued on 8 October 1992.

[7] Administrative Order No. 13.

Subsequently, then President Ramos issued Memorandum Order No. 61[8] outlining the criteria which may be utilized as a frame of reference in determining a behest loan, *viz:*

a. It is under-collateralized;
b. The borrower corporation is undercapitalized;
c. Direct or indirect endorsement by high government officials like presence of marginal note;
d. Stockholders, officers or agents of the borrower corporation are identified as cronies;
e. Deviation of use of loan proceeds from the purpose intended;
f. Use of corporate layering;
g. Non-feasibility of the project for which financing is being sought;
h. Extraordinary speed in which the loan release was made.

The Committee found that twenty-one (21) corporations, including MINCOCO, obtained behest loans. It claimed that the fact that MINCOCO was under-collateralized and undercapitalized; that its officers were identified as cronies; that the late President Marcos had marginal note, effectively waiving the government's right to foreclose MINCOCO's mortgage liens; and, that the Guarantee Loan Accommodation were approved in an extraordinary speed of one month, bore badges of behest loans.

Subsequently, the Committee filed with the Ombudsman a sworn complaint against MINCOCO's Officers and NIDC's Board of Directors for violation of Section 3(e) and (g) of Republic Act No. 3019,[9] as amended.

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[8] Issued on 9 November 1992.

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

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This

By Resolution dated 9 July 1998, the Ombudsman *motu proprio* dismissed the complaint on the grounds that, *first*, there was insufficient evidence to warrant the indictment of the persons charged; and, *second*, the alleged offenses had prescribed.[10] The Ombudsman explained:

Being undercapitalized, standing alone is meaningless. The approval of the loans/guarantees was still based on sound lending practice, otherwise, MINCOCO would have been disqualified from obtaining the same. If MINCOCO's equity was more than the amount of the loans, there was no need for it to obtain the latter.

Anent the claim that Mohammad Ali Dimaporo was a crony of the late President Marcos, no evidence was adduced to prove the same, hence, remains a bare allegation. x x x.

On the issue that the notation by President Marcos in the Memorandum of July 18, 1983 is a behest order, suffice it to state that these marginal notes, if they meant endorsement as defined under Memorandum Order No. 61, endorsed the recommendation regarding the mortgage liens of the government banks of the Mothballed Coconut Oil Mills and not the approval/grant of the loans/guarantees in 1976. **It is in effect approved the release of the liabilities of the former owners of coconut oil mills, one of which was MINCOCO,** but not the acquisition of the said loans/guarantees.

The take over of MINCOCO by UNICOM without the consent of NIDC is not a characteristic of a behest loan. **It is a mere violation of procedures that does not warrant a criminal action.**

x x x x x x x x x

For the perpetration of the acts being complained of, the respondents are charged of violations of Sections 3(e) and (g) of Republic Act No. 3019. The instant case however will no longer prosper for the offenses have already **prescribed.**

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provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

[10] Ombudsman Resolution. *Rollo,* pp. 28-34.

Be it remembered that MINCOCO applied for and was granted loans/guarantees way back in 1976. Thus, these acts are governed by the law in force at the time of their commission, which is the old R.A. No. 3019 before its amendment by *Batas Pambansa Blg.* 195 in March 1982. Offenses perpetrated prior to the enactment of this latter law prescribed ten (10) years later. And since the case was filed against the herein respondents only in September 1997, the offenses have long prescribed in 1986.

Prescription commenced to run in 1976 when the assailed transaction happened. x x x.[11]

Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Court.[12]

The petitioner argued that the right of the State to recover behest loans as ill-gotten wealth is imprescriptible under Section 15, Article XI of the 1987 Constitution;[13] and, assuming that the period to file criminal charges herefore is subject to prescription, the prescriptive period should be counted from the time of discovery of behest loans or sometime in 1992 when the Committee was constituted.[14]

The Ombudsman, in his Comment, countered that his office has the discretionary power during preliminary investigation to determine the sufficiency of evidence for indictment;[15] that it is beyond the ambit of the Court to review this exercise of discretion;[16] that Section 15, Article XI of the 1987 Constitution applies only to civil suits and not to criminal proceedings;[17]

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

[12] Per Order dated 13 August 1998, the Ombudsman Denied the Motion for Reconsideration filed by the petitioner. *Id.* at 35-38.

[13] Petition. *Id.* at 17-18.

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

[15] Ombudsman's Comment. *Id.* at 342.

[16] *Id.*

[17] *Id.*

and, that the crime under which the respondents herein were charged had already prescribed.[18]

Private respondents Panfilo O. Domingo and Enrique M. Herboza, filed their respective Comments mainly reiterating the Ombudsman's contentions. The other respondents did not file their Comments, and, thus, considered to have waived their chance thereto.

The Court's Ruling

The remedy from an adverse resolution of the Ombudsman is a petition for *certiorari* under Rule 65 of the Rules of Court; what was filed with the Court, however, was a petition for review on *certiorari* under Rule 45. Nevertheless, the Court will treat this petition as one filed under Rule 65 since a reading of its contents shows that the Committee imputes grave abuse of discretion to the Ombudsman for dismissing the complaint.[19] This was how we also treated the previous cases marred by the same procedural lapse, the latest of which is the 2009 *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto* (G.R. No. 135703).[20]

At the core of the controversy is the Ombudsman's Resolution holding that prescription had already set-in effectively barring the institution of charges against the private respondents. The Ombudsman claimed that the alleged behest loans, transpired in 1976,[21] and, thus, the complaint filed after more than two decades from the commission thereof or on 8 October 1997, was well beyond the 10-year prescriptive period provided for under the old Republic Act No. 3019.[22]

In resolving the issue of prescription, the following shall be considered: (1) the period of prescription for the offense charged;

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[18] *Id.*

[19] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* G.R. No.135703, 15 April 2009, 585 SCRA 18, 28.

[20] *Id.*

[21] Petition. *Rollo,* p. 13.

[22] THE ANTI GRAFT AND CORRUPT PRACTICES ACT.

(2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted.[23]

At the outset, the provision found in Section 15, Article XI of the 1987 Constitution that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, **shall not be barred by prescription,** laches or estoppels," has already been settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130140),[24] where the Court held that the above cited constitutional provision "applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases."[25]

The period of prescription for the crime charged in this petition, committed in 1976 and prior to the amendment of Republic Act No. 3019, is ten (10) years.

Section 11[26] of Republic Act No. 3019 as amended by *Batas Pambansa Blg.* 195, provides that the offenses committed under Republic Act No. 3019 shall prescribe in fifteen (15) years; prior to this amendment, however, under the old Republic Act No. 3019, this prescriptive period was only ten (10) years. In *People v. Pacificador,*[27] the Court held that the longer prescriptive period of 15-years does not apply in crimes committed prior to the effectivity of *Batas Pambansa Blg.* 195, which was approved on 16 March 1982, because, not being favorable to the accused, it cannot be given retroactive effect. Considering that the alleged

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[23] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* G.R. No. 130817, 22 August 2001, 363 SCRA 489, 493.

[24] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* G.R. No. 130140, 25 October 1999, 317 SCRA 272.

[25] *Id.* at 289.

[26] Section 11. *Prescription of Offenses.* — All offenses punishable under this Act shall prescribe in fifteen years.

[27] G.R. No. 139405, 13 March 2001, 354 SCRA 310, 318.

crime was committed in 1976, and in line with the Court's ruling in *Pacificador,* the prescription period should be ten (10) years.

Prescription of crime shall begin to run from the day of its commission, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

While we sustain the Ombudsman's contention that the prescriptive period for the crime charged herein is 10 years and not 15 years, we are not persuaded that in this specific case, the prescriptive period began to run in 1976, when the loans were transacted.

The time as to when the prescriptive period starts to run for crimes committed under Republic Act No. 3019, a special law, is covered by Act No. 3326,[28] Section 2 of which provides that:

> Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, **and if the same be not known at the time, from the discovery thereof** and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy.

Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period.[29] An exception to this rule is the

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[28] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACT AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

[29] Then Associate Justice Reynato S. Puno (Ret.) Concurring and Dissenting Opinion in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 24 at 319.

"blameless ignorance" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations **where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action."**[30] It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque*[31] which became the cornerstone of our 1999 Decision in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130149),[32] and the subsequent cases[33] which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases,[34] that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.

Corollary, it is safe to conclude that the prescriptive period for the crime which is the subject herein, commenced from the date of its discovery in 1992 after the Committee made an exhaustive investigation.[35] When the complaint was filed in 1997,

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[30] *Id.* at 318-319 citing 21 AM JUR 2d, pp. 715-716.

[31] G.R. No. 100285, 13 August 1992, 212 SCRA 607.

[32] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 24.

[33] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* G.R. 130817, *supra* note 23; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* G.R. No. 135119, 21 October 2004, 441 SCRA 106; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman,* G.R. No. 135350, 3 March 2006, 484 SCRA 16; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Tabasondra,* G.R. No. 133756, 4 July 2008, 557 SCRA 31.

[34] *People v. Duque, supra* note 31; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 24; *Presidential Commission on Good Government v. Desierto,* G.R. No. 140358, 8 December 2000, 347 SCRA 561.

[35] 415 Phil. 723 (2001).

only five years have elapsed, and, hence, prescription has not yet set in. The *rationale* for this was succinctly discussed in the 1999 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans*,[36] that "it was well-high impossible for the State, the aggrieved party, to have known these crimes committed prior to the 1986 EDSA Revolution, because of the alleged connivance and conspiracy among involved public officials and the beneficiaries of the loans."[37] In yet another pronouncement, in the 2001 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130817),[38] the Court held that during the Marcos regime, no person would have dared to question the legality of these transactions.

While the Ombudsman has the full discretion to determine whether a criminal case is to be filed, the Court is not precluded from reviewing the Ombudsman's action when there is a grave abuse of discretion.

True, the Ombudsman is a constitutionally created body with constitutionally mandated independence. Despite this, however, the Ombudsman comes within the purview of the Court's power of judicial review[39] — a peculiar concept of Philippine Ombudsman, embodied in Article VIII, Section 1 of the 1987 Constitution[40] — which serves as a safety net against its capricious and arbitrary acts.[41] Thus, in *Garcia-Rueda v.*

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[36] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 19.

[37] *Id.* at 28.

[38] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 23.

[39] M. Maulion, *Power and Paradox: Deconstructing Ombudsman Independence Amidst the Thicket of the Constitution, Law and Jurisprudence,* LI U.S.T. L. REV. 140-141.

[40] *Id.*

[41] *Id.*

Pascasio,[42] the Court held that "while the Ombudsman has the full discretion to determine whether or not a criminal case is to be filed, the Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion."[43] This is because, "while the Ombudsman enjoys, as it must, complete independence, it cannot and must not lose track of the law, which it is bound to uphold and obey."[44]

After reviewing the case's records, the Court finds that the present petition calls for the exercise of its power of judicial review.

Private respondents are charged with violation of Section 3(e) and (g) of Republic Act No. 3019 which states:

> Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
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> x x x x x x x x x
>
> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

From the 1999 landmark case of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No.

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[42] G.R. No. 118141, 5 September 1997, 278 SCRA 769 at 776 cited in M. Maulion, *Power and Paradox: Deconstructing Ombudsman Independence Amidst the Thicket of the Constitution, Law and Jurisprudence, supra* note 39.

[43] *Id.* at 141.

[44] *Id.*

130140),[45] to the 2008 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Tabasondra* (G.R. No. 133756),[46] and to the 2009 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 135703),[47] the same issues confronted the Court as the one presented in the present petition, in that the Ombudsman similarly dismissed these cases not only on the ground of prescription but also for insufficiency of evidence.[48]

Interestingly, the facts in *Tabasondra*[49] are squarely on all fours as the present case. *Tabasondra*,[50] involved Coco-Complex Philippines, Inc., (CCPI), a domestic corporation primarily incorporated for the manufacture of coconut oil.[51] CCPI applied for Guarantee Loan Accommodation thru the National Investment Development Corporation amounting to ₱9,277,080.00, allegedly for the purchase of an oil mill to be supplied by Krupp Germany. The NIDC Board approved the loan in 1969,[52] notwithstanding the fact that CCPI was undercapitalized with only ₱2,111,000.00 paid-up capital,[53] and under-collateralized with only ₱495,300.00 assets.[54] Thus, with the NIDC's Guarantee Loan Accommodation, the Philippine National Bank (PNB) granted the loan. Still, with NIDC's guarantee, CCPI obtained additional loans from PNB in 1972, which, as of 1992, ballooned to ₱205,889,545.76.

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[45] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 24.

[46] *Supra* note 33.

[47] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 19.

[48] *Id.*

[49] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Tabasondra, supra* note 33.

[50] *Id.*

[51] *Id.* at 35.

[52] *Id.*

[53] As of 31 December 1969, *id.* at 36.

[54] *Id.*

When the Committee filed criminal complaints against the CCPI's Officers and PNB's Board of Directors for violation of Section 3(e) and (g) of Republic Act No. 3019, the Ombudsman dismissed the complaint on the ground of prescription. For this, the Committee charged the Ombudsman for grave abuse of discretion, but pending its resolution before us, the Ombudsman, taking cue from the Court's 1999 ruling in G.R. No. 130140,[55] *motu proprio* reinvestigated the complaint it earlier dismissed (and was still pending before us), only to dismiss it anew, in a Resolution dated 16 October 2000, opining that NIDC's Board of Directors, **who approved the loans in favor of CCPI, should have been the ones indicted.**[56] Subsequently, the Court dismissed *Tabasondra* for being moot and academic.

Similarly, in the present petition, MINCOCO was also granted by NIDC a Guarantee Loan Accommodation amounting initially to ₱30.4 million pesos, despite its being undercapitalized and under-collateralized.[57]

As the Ombudsman admitted, when MINCOCO's mortgage liens were about to be foreclosed by the government banks, the late President Marcos intervened and through a marginal note, in connivance with the NIDC's officers, waived the liabilities of its owners to the detriment of the government.[58] It behooves the Court that while the Ombudsman admitted this fact, it saw nothing wrong in President Marcos' intervention, and the involvement therein of the NIDC's officers. This intervention alone, by no less than the highest official of the land, waiving a multi-million peso liability of a private corporation, should have alarmed the Ombudsman.

It surprises us that while the Ombudsman dismissed *Tabasondra* for not impleading therein the NIDC's Board of

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[55] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 24.

[56] The Committee questioned the Ombudsman's dismissal thereof before the Court which is now pending for resolution. *Supra* note 33 at 40.

[57] Ombudsman's Resolution. *Rollo,* p. 29.

[58] *Id.* at 31.

Directors, now that they (NIDC's Board of Directors) have been impleaded, the Ombudsman still dismissed the complaint, allegedly for insufficiency of evidence.[59]

Applying *mutatis mutandis* G.R. No. 133756[60] in this petition, it is apparent that there can be liability for violation of Section 3(e) and (g) of Republic Act No. 3019.

Violation of Section 3(e)[61] of Republic Act No. 3019 requires that there be injury caused by giving unwarranted benefits, advantages or preferences to private parties who conspire with public officers. In contrast, Section 3(g)[62] does not require the giving of unwarranted benefits, advantages or preferences to private parties, its core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government.

The waiver of MINCOCO's multi-peso loan should have been enough basis in finding that probably Section 3(e) of Republic Act No. 3019 was violated and the fact that NIDC extended a loan guarantee to MINCOCO, despite its being undercapitalized and under-collateralized, should have also been enough ground in finding probable cause for violation of Section 3(g) of the above-cited law.

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[59] *Id.* at 33.

[60] *Presidential As Hoc Fact-Finding Committee on Behest Loans v. Tabasondra, supra* note 33.

[61] The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the government or any party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

[62] On the other hand, the elements of the offense in Section 3(g) are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

More importantly, the finding of the Committee that MINCOCO obtained behest loans because of the following circumstances: **MINCOCO was under-collateralized and undercapitalized; its officers were identified as cronies; President Marcos had marginal note, effectively waiving the government's right to foreclose MINCOCO's mortgage liens; and, NIDC approved MINCOCO's Guarantee Loan Accommodation in an extraordinary speed of one month, should have been accorded a proper modicum of respect by the Ombudsman.**

Considering the membership of the Committee — representatives from the Department of Finance, The Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even the Development Bank of the Philippines — its recommendation should be given great weight. No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of the loan/guarantee or what would generally constitute as adequate security for a given loan.[63]

The duty of the Ombudsman in the conduct of a preliminary investigation is to establish whether there exists probable cause to file information in court against the accused.[64] A finding of probable cause needs only to rest on evidence showing that more likely than not, the accused committed the crime.[65] Considering the quantum of evidence needed to support a finding of probable cause, the Court holds that the Ombudsman gravely abused its discretion when it dismissed the complaint against herein respondents.

Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence.[66] It is for the

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[63] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 19 at 34.

[64] *Id.* at 33.

[65] *Id.*

[66] *Id.*

presentation of such evidence only as may engender a well founded belief that an offense has been committed and that the accused is probably guilty thereof.[67] The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.[68]

In conclusion, the offenses ascribed to respondents "involve behest loans which bled white the economy of the country, one of the excesses of the authoritarian regime that led to the EDSA revolution, a serious evil that the 1987 Constitution aimed to extirpate."[69] It involves nothing less than the interest of the people whose transgressed rights are supposed to be vindicated by their protector — the Ombudsman.[70] As protector of the people, the Ombudsman should be pro-active in making use of its vast arsenal of powers to "bring the lamp of scrutiny to otherwise dark places even over the resistance of those who would draw the blinds."[71]

The criminal liability of Conrado S. Reyes is hereby extinguished in accordance with Article 89(1)[72] of the Revised Penal Code as confirmed by his death certificate.[73] With respect to respondents

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[67] *Id.*

[68] *Id.*

[69] Then Associate Justice Reynato S. Puno (Ret.) Concurring and Dissenting Opinion in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, *supra* note 29 at 323.

[70] *Id.*

[71] Commenting on the role of Ombudsman, which was challenged in 1970 in Alberta, Canada, Chief Justice Milvain said "x x x [h]e can bring the lamp of scrutiny to otherwise dark places even over the resistance of those who would draw the blinds. x x x." M. Maulion, *Power and Paradox: Deconstructing Ombudsman Independence Amidst the Thicket of the Constitution, Law and Jurisprudence, supra* note 39 at 110 citing *Wafaqi Mohtasib Annual Report* [http://www/policy.hu/bokhari/OmbuIntro.htm].

[72] Article 89. *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before judgment.

[73] Death Certificate. *Rollo,* p. 249.

Panfilo O. Domingo and Mohammad Ali Dimaporo, the facts of their deaths have to be confirmed to determine the application to them of the same provision.

WHEREFORE, the petition is *GRANTED.* The Ombudsman is hereby *ORDERED* to:

1. *DISMISS* the complaint against deceased respondent Conrado S. Reyes;

2. *REQUIRE* the counsels of respondents Panfilo O. Domingo and Mohammad Ali Dimaporo to submit proof of their deaths; and

3. *FILE* with the *Sandiganbayan* the necessary Information against respondents Abdullah Dimaporo, Amer Dianalan, Enrique M. Herboza, and Ricardo Sunga.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 150898. April 13, 2011]

OCEAN BUILDERS CONSTRUCTION CORP., and/or DENNIS HAO, *petitioners, vs.* **SPOUSES ANTONIO and ANICIA CUBACUB,** *respondents.*

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[*] Per Raffle dated 12 April 2011, Associate Justice Diosdado M. Peralta is designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. inhibition.

SYLLABUS

1. CIVIL LAW; TORTS; ELEMENTS; INJURY AND PROXIMATE CAUSE, CONSTRUED; APPLICATION IN CASE AT BAR. — To successfully prosecute an action anchored on torts, three elements must be present, *viz*: (1) duty (2) breach (3) injury and proximate causation. The assailed decision of the appellate court held that it was the duty of petitioners to provide adequate medical assistance to the employees under Art. 161 of the Labor Code, failing which a breach is committed. x x x The Implementing Rules of the Code do not enlighten what the phrase "adequate and immediate" medical attendance means in relation to an "emergency." It would thus appear that the determination of what it means is left to the employer, except when a full-time registered nurse or physician are available on-site as required, also under the Labor Code, specifically Art. 157. x x x AT ALL EVENTS, the alleged negligence of Hao cannot be considered as the proximate cause of the death of Bladimir. Proximate cause is that which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces injury, and without which, the result would not have occurred. An injury or damage is proximately caused by an act or failure to act, whenever it appears from the evidence in the case that the act or omission played a *substantial* part in bringing about or actually causing the injury or damage, and that the injury or damage was either a *direct result* or a *reasonably probable consequence* of the act or omission.

2. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; A DULY-REGISTERED DEATH CERTIFICATE IS CONSIDERED A PUBLIC DOCUMENT AND THE ENTRIES THEREIN ARE PRESUMED CORRECT; EXCEPTION; PRESENT IN CASE AT BAR. — It bears emphasis that a duly-registered death certificate is considered a public document and the entries therein are presumed correct, unless the party who contests its accuracy can produce positive evidence establishing otherwise. The QCGH death certificate was received by the City Civil Registrar on April 17, 1995. Not only was the certificate shown by positive evidence to be inaccurate. Its credibility, more than that issued by Dr. Frias, becomes more pronounced as note is taken of the fact that he was not around at the time of death.

BERSAMIN, *J., dissenting opinion*:

1. CIVIL LAW; *QUASI-DELICT*; REQUISITES. — Under the concept of *quasi-delict*, whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. To sustain a claim based on *quasi-delict*, the following requisites must concur: (a) there must be damage caused to the plaintiff; (b) there must be negligence by act or omission, of which the defendant or some other person for whose acts the defendant must respond was guilty; and (c) there must be a connection of cause and effect between such negligence and the damage.

2. ID.; ID.; ID.; NEGLIGENCE; DEFINED. — Negligence, according to *Layugan v. Intermediate Appellate Court*, is "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do, or as Judge Cooley defines it, '(t)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"

3. ID.; ID.; ID.; ID.; TEST FOR THE EXISTENCE OF NEGLIGENCE; ELUCIDATED. — The test for the existence of negligence in a particular case has been aptly put in *Picart v. Smith*, thuswise: The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence**. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. **The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that. The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in**

the particular case. x x x Negligence is a relative term, not an absolute one, because its application depends upon the situation of the parties and the reasonable degree of care and vigilance that the surrounding circumstances reasonably impose. Consequently, when the danger is great, a high degree of care is required, and the failure to observe such degree of care amounts to want of ordinary care. The essential linkage between the negligence or fault, on one hand, and the injury or damage, on the other hand, must be credibly and sufficiently established. An injury or damage is proximately caused by an act or a failure to act whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; REQUIREMENT TO PROVIDE MEDICAL AND DENTAL SERVICES AND FACILITIES TO EMPLOYEES, VIOLATED IN CASE AT BAR. — The implementing rules of the *Labor Code* required OBCC to provide medical and dental services and facilities to its employees. Specifically, under Section 4(a), Rule 1 of the Implementing Rules of Book IV, OBCC had the legal obligation due to the number of its workers being at least 27 in number (that is, seven regular employees and 20 contractual ones, according to Hao) to employ *at least* a graduate first-aider, who might be one of the workers in the workplace; such graduate first-aider must be afforded immediate access to the first-aid medicines, equipment, and facilities. The term *first-aider* refers to a person who has been *trained* and *duly certified* as qualified to administer first aid by the Philippine National Red Cross (PNRC) or any other organization accredited by the PNRC. The term *first-aid treatment* means adequate, immediate, and necessary medical attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such an injury or illness is work-connected, before more extensive medical or dental treatment can be secured; it does not include continued treatment or follow-up treatment for any injury or illness.

APPEARANCES OF COUNSEL

Renato T. Nuguid for petitioners.
Servillano S. Santillan for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Bladimir Cubacub (Bladimir) was employed as maintenance man by petitioner company Ocean Builders Construction Corp. at its office in Caloocan City.

On April 9, 1995, Bladimir was afflicted with chicken pox. He was thus advised by petitioner Dennis Hao (Hao), the company's general manager, to rest for three days which he did at the company's "barracks" where he lives free of charge.

Three days later or on April 12, 1995, Bladimir went about his usual chores of manning the gate of the company premises and even cleaned the company vehicles. Later in the afternoon, however, he asked a co-worker, Ignacio Silangga (Silangga), to accompany him to his house in Capas, Tarlac so he could rest. Informed by Silangga of Bladimir's intention, Hao gave Bladimir ₱1,000.00 and ordered Silangga to instead bring Bladimir to the nearest hospital.

Along with co-workers Narding and Tito Vergado, Silangga thus brought Bladimir to the Caybiga Community Hospital (Caybiga Hospital), a primary-care hospital around one kilometer away from the office of the company.

The hospital did not allow Bladimir to leave the hospital. He was then confined, with Narding keeping watch over him. The next day, April 13, 1995, a doctor of the hospital informed Narding that they needed to talk to Bladimir's parents, hence, on Silangga's request, their co-workers June Matias and Joel Edrene fetched Bladimir's parents from Tarlac.

At about 8 o'clock in the evening of the same day, April 13, 1995, Bladimir's parents-respondent spouses Cubacub, with

their friend Dr. Hermes Frias (Dr. Frias), arrived at the Caybiga Hospital and transferred Bladimir to the Quezon City General Hospital (QCGH) where he was placed in the intensive care unit and died the following day, April 14, 1995.

The death certificate issued by the QCGH recorded Bladimir's immediate cause of death as cardio-respiratory arrest and the antecedent cause as pneumonia. On the other hand, the death certificate issued by Dr. Frias recorded the causes of death as cardiac arrest, multiple organ system failure, septicemia and chicken pox.

Bladimir's parents-herein respondents later filed on August 17, 1995 before the Tarlac Regional Trial Court (RTC) at Capas a complaint for damages against petitioners, alleging that Hao was guilty of negligence which resulted in the deterioration of Bladimir's condition leading to his death.

By Decision of April 14, 1997,[1] Branch 66 of the Tarlac RTC at Capas dismissed the complaint, holding that Hao was not negligent. It ruled that Hao was not under any obligation to bring Bladimir to better tertiary hospitals, and assuming that Bladimir died of chicken pox aggravated by pneumonia or some other complications due to lack of adequate facilities at the hospital, the same cannot be attributed to Hao.

On respondents' appeal, the Court of Appeals, by Decision of June 22, 2001, ***reversed*** the trial court's decision, holding that by Hao's failure to bring Bladimir to a better-equipped hospital, he violated Article 161 of the Labor Code. It went on to state that Hao should have foreseen that Bladimir, an adult, could suffer complications from chicken pox and, had he been brought to hospitals like St. Luke's, Capitol Medical Center, Philippine General Hospital and the like, Bladimir could have been saved.

Thus the appellate court disposed:

WHEREFORE, the decision of the Regional Trial Court of Capas, Tarlac, Branch 66 in Civil Case No. 349 dated April 14, 1997 is

[1] *Rollo*, pp. 55-67.

hereby REVERSED and SET ASIDE and a new one rendered holding the defendants solidarily liable to plaintiffs-appellants for the following:

1. ₱50,000.00 for the life of Bladimir Cubacub;
2. ₱584,630.00 for loss of Bladimir's earning capacity;
3. ₱4,834.60 as reimbursement of expenses incurred at Quezon City General Hospital as evidenced by Exhibits "E" to "E-14" inclusive;
4. ₱18,107.75 as reimbursement of expenses for the 5-day wake covered by Exhibits "F" to "F-17";
5. ₱30,000.00 as funeral expenses at Prudential Funeral Homes covered by Exhibit "I";
6. ₱6,700.00 for acquisition of memorial lot at Sto. Rosario Memorial Park covered by Exhibit "J";
7. ₱50,000.00 as moral damages;
8. ₱20,000.00 as exemplary damages;
9. ₱15,000.00 as attorney's fees and
10. Cost of suit.

SO ORDERED.[2]

The motion for reconsideration was denied by Resolution[3] of November 26, 2001, hence this petition.

Petitioners maintain that Hao exercised the diligence more than what the law requires, hence, they are not liable for damages.

The petition is meritorious.

At the onset, the Court notes that the present case is one for damages based on torts, the employer-employee relationship being merely incidental. To successfully prosecute an action

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[2] Court of Appeals Decision, *rollo*, pp. 81-82. Penned by Associate Justice (now SC Justice) Presbitero J. Velasco, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Juan Q. Enriquez, Jr.

[3] *Rollo*, pp. 105-106. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justice Rodrigo V. Cosico and Juan Q. Enriquez, Jr.

anchored on torts, three elements must be present, *viz*: (1) duty (2) breach (3) injury and proximate causation. The assailed decision of the appellate court held that it was the duty of petitioners to provide adequate medical assistance to the employees under Art. 161 of the Labor Code, failing which a breach is committed.

Art. 161 of the Labor Code provides:

ART. 161. *Assistance of employer*. — It shall be the duty of any employer to provide all the **necessary assistance** to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick employee in case of emergency. (emphasis and underscoring supplied)

The Implementing Rules of the Code do not enlighten what the phrase "adequate and immediate" medical attendance means in relation to an "emergency." It would thus appear that the determination of what it means is left to the employer, except when a full-time registered nurse or physician are available on-site as required, also under the Labor Code, specifically Art. 157 which provides:

Article 157. *Emergency Medical and Dental Services.* — It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:

(a) The services of a full-time registered nurse when the number of employees exceeds **fifty (50)** but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case, the services of a graduate first-aider shall be provided for the protection of workers, where no registered nurse is available. The Secretary of Labor and Employment shall provide by appropriate regulations, the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order, hazardous workplaces for purposes of this Article;

(b) The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and

(c) The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300). (emphasis and underscoring supplied)

In the present case, there is no allegation that the company premises are hazardous. Neither is there any allegation on the number of employees the company has. If Hao's testimony[4] would be believed, the company had only seven regular employees and 20 contractual employees — still short of the minimum 50 workers that an establishment must have for it to be required to have a full-time registered nurse.

The Court can thus only determine whether the actions taken by petitioners when Bladimir became ill amounted to the "necessary assistance" to ensure "adequate and immediate medical . . . attendance" to Bladimir as required under Art. 161 of the Labor Code.

As found by the trial court and borne by the records, petitioner Hao's advice for Bladimir to, as he did, take a 3-day rest and to later have him brought to the nearest hospital constituted "adequate and immediate medical" attendance that he is mandated, under Art. 161, to provide to a sick employee in an emergency.

Chicken pox is self-limiting. Hao does not appear to have a medical background. He may not be thus expected to have known that Bladimir needed to be brought to a hospital with better facilities than the Caybiga Hospital, contrary to appellate court's ruling.

AT ALL EVENTS, the alleged negligence of Hao cannot be considered as the proximate cause of the death of Bladimir. Proximate cause is that which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces injury, and without which, the result would not have occurred.[5] An

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[4] *Vide* TSN, Hearing on January 7, 1997, p. 8.

[5] *Lasam v. Sps. Ramolete,* G.R. No. 159132, Dec. 18, 2008, 574 SCRA 439.

injury or damage is proximately caused by an act or failure to act, whenever it appears from the evidence in the case that the act or omission played a *substantial* part in bringing about or actually causing the injury or damage, and that the injury or damage was either a *direct result* or a *reasonably probable consequence* of the act or omission.[6]

Verily, the issue in this case is essentially *factual* in nature. The dissent, apart from adopting the appellate court's findings, finds that Bladimir contracted chicken pox from a co-worker and Hao was negligent in not bringing that co-worker to the nearest physician, or isolating him as well. This *finding is not, however, borne by the records*. Nowhere in the appellate court's or even the trial court's decision is there any such definite finding that Bladimir contracted chicken pox from a co-worker. At best, the only allusion to another employee being afflicted with chicken pox was when Hao testified that he knew it to heal within three days as was the case of another worker, without reference, however, as to when it happened.[7]

On the issue of which of the two death certificates is more credible, the dissent, noting that Dr. Frias attended to Bladimir during his "last illness," holds that the certificate which he issued — citing chicken pox as antecedent cause — deserves more credence.

There appears, however, to be no conflict in the two death certificates on the immediate cause of Bladimir's death since both cite cardio-respiratory arrest due to complications — from pneumonia per QCGH, septicemia and chicken pox per Dr. Frias'. In fact, Dr. Frias admitted that the causes of death in both certificates were the same.[8]

Be that as it may, Dr. Frias could not be considered as Bladimir's attending physician, he having merely ordered

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[6] *Ibid.*

[7] *Vide* TSN, Hearing on January 7, 1997, p. 25.

[8] *Vide* TSN, Hearing on June 25, 1996, Direct Examination of Dr. Frias, records, p. 30.

Bladimir's transfer to the QCGH after seeing him at the Caybiga Hospital. He thereafter left Bladimir to the care of doctors at QCGH, returning to Capas, Tarlac at 4 o'clock the following morning or eight hours after seeing Bladimir. As he himself testified upon cross-examination, he did *not* personally attend to Bladimir anymore once the latter was brought to the ICU at QCGH.[9]

It bears emphasis that a duly-registered death certificate is considered a public document and the entries therein are presumed correct, unless the party who contests its accuracy can produce positive evidence establishing otherwise.[10] The QCGH death certificate was received by the City Civil Registrar on April 17, 1995. Not only was the certificate shown by positive evidence to be inaccurate. Its credibility, more than that issued by Dr. Frias, becomes more pronounced as note is taken of the fact that he was not around at the time of death.

IN FINE, petitioner company and its co-petitioner manager Dennis Hao are not guilty of negligence.

WHEREFORE, the petition is *GRANTED*. The challenged Decision of the Court of Appeals is *REVERSED*, and the complaint is hereby *DISMISSED*.

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

Bersamin, J., dissents.

DISSENTING OPINION

BERSAMIN, *J.*:

I dissent.

I find myself unable to join my Honorable Brethren in the Third Division in the result to be reached herein. My review of the records constrains me to travel the lonely path, convinced

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[9] *Vide* TSN, Hearing on June 25, 1996, *id.* at 35.

[10] *Philamlife v. CA*, 398 Phil. 599 (2000).

to now forsake unanimity in order to urge giving just solace to the aggrieved parents of a poor employee who died from the complications of chicken pox after his employers forced him to continue on the job despite his affliction that, in the first place, he had contracted in the workplace from a co-employee. To me, his death was wrongful by reason of the employers' failure: (*a*) to isolate the co-worker to prevent the spread of chicken pox; (*b*) to provide to him the legally mandated first aid treatment; and (*c*) to extend adequate medical and other assistance for his affliction with chicken pox and the expected complications of the affliction (like letting him off from work in order to have complete rest).

Antecedents

This action concerns the damages claimed by the respondents, plaintiffs below, arising from the untimely death of their son, Bladimir Cubacub, while employed by Ocean Builders Construction Corporation (OBCC), then managed by petitioner Dennis Hao. Bladimir had contracted chicken pox and a cough and had later on collapsed in the workplace and rushed to the hospital. In its decision dated April 14, 1997, the RTC absolved the petitioners of any liability, and dismissed the complaint and the counterclaim, ruling that the proximate cause of Bladimir's death could not be attributed to the petitioners, particularly because the death certificate issued by the Quezon City General Hospital (QCGH) did not state chicken pox to be the cause of death, unlike the death certificate issued by Dr. Hermes Frias. The RTC observed that Bladimir, being already of age, had been responsible for his own act of reporting to work despite his illness; that chicken pox was not a serious disease requiring hospitalization, but a self-limiting one that would heal by itself if proper care of the patient was taken; and that the petitioners as employers were not mandated by any law to send Bladimir to a hospital.

The respondents appealed to the Court of Appeals (CA), which reversed the RTC. The CA held that the respondents established the petitioners' liability by preponderant evidence, and, accordingly, found that Bladimir's health had deteriorated because

he had been made to work despite his illness and because Hao, as the manager of OBCC, had denied Bladimir's request to take a vacation; that prior to his collapse, Bladimir had been suffering from the complications of chicken pox and had needed immediate medical treatment; and that the petitioners did not extend the requisite assistance to Bladimir despite their employer's duty under Article 161 of the *Labor Code* to provide medical attention and treatment to an injured or sick employee in times of emergency.

The CA then disposed thuswise:

> WHEREFORE, the decision of the Regional Trial Court of Capas, Tarlac, Branch 66 in Civil Case No. 349 dated dated April 14, 1997 is hereby REVERSED and SET ASIDE and a new one rendered holding the defendants solidarily liable to plaintiffs-appellants for the following:
>
> 1. ₱50,000.00 for the life of Bladimir Cubacub;
> 2. ₱584,630.00 for loss of Bladimir's earning capacity;
> 3. ₱4,834.60 as reimbursement of expenses incurred at Quezon City General Hospital as evidenced by Exhibit "E" to "E-14" inclusive;
> 4. ₱18,107.75 as reimbursement of expenses for the 5-day wake covered by Exhibits "F" to "F-17";
> 5. ₱30,000.00 as funeral expenses at Prudential Funeral Homes covered by Exhibit "I";
> 6. ₱6,700.00 for acquisition of memorial lot at Sto. Rosario Memorial Park covered by Exhibit "J";
> 7. ₱50,000.00 as moral damages;
> 8. ₱20,000.00 as exemplary damages;
> 9. ₱15,000.00 as attorney's fees; and
> 10. Cost of suit.
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> SO ORDERED.[1]

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[1] *Supra*, note 1.

The petitioners sought reconsideration, but the CA rebuffed them.

Hence, this appeal, wherein the petitioners contend that the CA erred in concluding that they had not exercised the diligence of a good father of a family and in giving weight to the death certificate issued by Dr. Frias.

Submission

The appeal has no merit.

1.
CA must be upheld on its resolution because the appeal involves essentially factual issues

The petitioners, conscious that they hereby raise issues essentially factual in nature, submit that their appeal should be given due course as an exception pursuant to *Fuentes v. Court of Appeals* (G.R. No. 109849, February 26, 1997, 268 SCRA 703) because the factual findings of the CA conflicted with those of the RTC.

I am not persuaded that we should give due course to the appeal on that basis. The mere variance between the factual findings of the trial and appellate courts does not necessarily indicate that the CA's ruling was erroneous, or less worthy than the RTC's. The petitioners' burden was to present strong cogent reasons to convince the Court to reverse the CA, but their reasons were weak and contrary to the records. The CA, acting as the reviewing court *vis-à-vis* the RTC, reasonably considered and appreciated the records of the trial; hence, its appreciation and determination of the factual and legal issues are entitled to great respect. Thus, the CA's ruling should be affirmed, not reversed.

2.
Petitioners were guilty for the wrongful death of Bladimir

The respondents have anchored their action for damages on the provisions of the *Civil Code* on *quasi-delict* and human relations.

Under the concept of *quasi-delict*, whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done.[2] To sustain a claim based on *quasi-delict*, the following requisites must concur: (*a*) there must be damage caused to the plaintiff; (*b*) there must be negligence by act or omission, of which the defendant or some other person for whose acts the defendant must respond was guilty; and (*c*) there must be a connection of cause and effect between such negligence and the damage.[3]

Negligence, according to *Layugan v. Intermediate Appellate Court*,[4] is "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do,[5] or as Judge Cooley defines it,[6] '(t)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"[7]

The test for the existence of negligence in a particular case has been aptly put in *Picart v. Smith*,[8] thuswise:

The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing**

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[2] Article 2176, *Civil Code*.

[3] *Vergara v. Court of Appeals*, No. 77679, September 30, 1987, 154 SCRA 564; *FGU Insurance Corporation v. Court of Appeals*, G.R. No. 118889, March 23, 1998, 287 SCRA 718, 720-721.

[4] No. 73998, November 14, 1988, 167 SCRA 363.

[5] Citing Black Law Dictionary, Fifth Edition, 930.

[6] Citing Cooley On Torts, Fourth Edition, Vol. 3, 265.

[7] See also *Jarco Marketing Corporation v. Court of Appeals*, G.R. No. 129792, December 21, 1999, 321 SCRA 375, 386 (Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance that the circumstances justly demand, whereby such other person suffers injury.)

[8] 37 Phil. 809.

the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. **The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.**

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: **Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger**. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. **Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist**. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: **Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.**[9]

Negligence is a relative term, not an absolute one, because its application depends upon the situation of the parties and the reasonable degree of care and vigilance that the surrounding circumstances reasonably impose. Consequently, when the danger is great, a high degree of care is required, and the failure to observe such degree of care amounts to want of ordinary care.[10]

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[9] Bold underscoring supplied for emphasis.

[10] Pineda, *Torts and Damages (Annotated)*, 2004 ed., pp. 8-9.

The essential linkage between the negligence or fault, on one hand, and the injury or damage, on the other hand, must be credibly and sufficiently established. An injury or damage is proximately caused by an act or a failure to act whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.[11]

According to the petitioners, the following acts of Hao proved that they were not negligent, namely: (*a*) it was at Hao's instance that Bladimir was brought to the Caybiga Community Hospital; (*b*) before leaving for Hongkong, Hao instructed Ignacio Silangga, another employee, to attend to the needs of Bladimir who had been admitted in the hospital; and (*c*) Hao advised Bladimir to take a rest for three days.

The Majority hold that all that Article 161 of the *Labor Code*,[12] upon which, among others, the CA anchored its decision against the petitioners, required of the petitioners as the employers of the ill Bladimir was to render "necessary assistance" to ensure "adequate and immediate medical . . . attendance"; that Hao's advice to Bladimir to take a 3-day rest, which he did, and to later have Bladimir brought to the nearest hospital constituted the adequate and immediate medical attendance Article 161 mandated; and that given that chicken pox was self-limiting, Hao, who did not appear to have a medical background, might not be expected to have known that Bladimir needed to be brought to a hospital with better facilities than the Caybiga Hospital.

The Majority further hold that the alleged negligence of Hao could not be the proximate cause of the death of Bladimir, because

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[11] *Lasam v. Ramolete*, G.R. No. 159132, December 18, 2008, 574 SCRA 439; citing *Ramos v. Court of Appeals*, 378 Phil. 1198 (1999).

[12] Article 161. *Assistance of employer.* — It shall be the duty of any employer to provide all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick employee in case of emergency.

whatever he did or did not do played no substantial part in bring about or actually causing the injury or damage; hence, the death of Bladimir was neither the direct result nor a reasonably probable consequence of Hao's act or omission; that there was nothing in the records to show that Bladimir had contracted the chicken pox from an afflicted co-worker whom Hao negligently did not bring to the nearest physician, or did not isolate from his co-workers; that both lower courts did not make any definite finding that Bladimir had contracted the chicken pox from a co-worker; and that the only allusion to another employee being afflicted with chicken pox was made by Hao when he testified that he had known that chicken pox would heal within three days "as was the case of another worker, without reference, however, as to when it happened."[13]

I cannot accept the Majority's holding.

The Majority's favoring the petitioners disregards the records, which convincingly demonstrated and preponderantly established that Hao had failed to exercise the degree of care and vigilance *required under the circumstances*. Besides, the aforestated acts of Hao, objectively considered, did not warrant the petitioners' absolution from liability.

Let me elucidate.

2.a.
Petitioners violated the requirements of the *Labor Code* and its implementing rules

It is good to start by unhesitatingly indicating that the petitioners as employers committed violations of the minimum standards of care that the law erected for the benefit of Bladimir and his co-workers.

The implementing rules of the *Labor Code* required OBCC to provide medical and dental services and facilities to its employees. Specifically, under Section 4(a), Rule 1 of the Implementing Rules of Book IV, OBCC had the legal obligation

[13] Majority Opinion, p. 7.

due to the number of its workers being at least 27 in number (that is, seven regular employees and 20 contractual ones, according to Hao) to employ *at least* a graduate first-aider, who might be one of the workers in the workplace; such graduate first-aider must be afforded immediate access to the first-aid medicines, equipment, and facilities.[14] The term *first-aider* refers to a person who has been *trained* and *duly certified* as qualified to administer first aid by the Philippine National Red Cross (PNRC) or any other organization accredited by the PNRC.[15] The term *first-aid treatment* means adequate, immediate, and necessary medical attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such an injury or illness is work-connected, before more extensive medical or dental treatment can be secured; it does not include continued treatment or follow-up treatment for any injury or illness.[16]

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[14] Section 4(a), Rule 1 of the Implementing Rules of Book IV provides:

Section 4. *Emergency medical and dental services.* — Any employer covered by this Rule shall provide his employees medical and dental services and facilities in the following cases and manner:

(a) When the number of workers is from 10 to 50 in a workplace, the services of a graduate first-aider shall be provided who may be one of the workers in the workplace and who has immediate access to the first-aid medicines prescribed in Section 3 of this Rule.

x x x x x x x x x

[15] Section 2(c), Rule 1 of the Implementing Rules of Book IV reads:

Section 2. *Definition.* — As used in this Rule, the following terms shall have the meanings indicated hereunder unless the context clearly indicates otherwise:

x x x x x x x x x

(c) "*First-aider*" means any person trained and duly certified as qualified to administer first aid by the Philippine National Red Cross or by any other organization accredited by the former.

x x x x x x x x x

[16] Section 2(a), Rule 1 of the Implementing Rules of Book IV states:

Section 2. *Definition.* — As used in this Rule, the following terms shall have the meanings indicated hereunder unless the context clearly indicates otherwise:

However, Hao admitted that OBCC did not have a clinic in the workplace, or a nurse or other competent person who might assist an employee *in an emergency*, or that OBCC had any agreement with a nearby hospital to attend to a sick employee.[17] The admitted failure to provide to the employees, in general, and to Bladimir, in particular, any of the several free emergency medical and dental services and facilities the *Labor Code* and the implementing rules and regulations of the Department of Labor and Employment required removed the foundation for absolving the petitioners from liability.

Chicken pox, or *varicella*, is a highly contagious disease of childhood, caused by a large DNA virus and characterized by a well-defined incubation period, and a vesicular rash that typically occurs in successive crops and most marked on the trunk. In healthy children, the disease is usually mild with clinical symptoms limited to the skin; but in immunosuppressed children and adults, life-threatening illness caused by deep visceral involvement is not uncommon.[18] Among the known complications of *varicella* are: (*a*) secondary bacterial infection; (*b*) *varicella* pneumonia; (*c*) dissemination to other viscera; (*d*) central nervous system complications; (*e*) coagulation complications; and (*f*) rare complications such as *varicella* infection of the cornea, edema, Reyes' syndrome, or myocarditis.[19]

Chicken pox is a self-limiting disease that heals by itself when properly taken care of by giving the patient sufficient

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(a) *"First aid treatment"* means adequate, immediate and necessary medical and dental attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such injury or illness is work-connected, before more extensive medical and/or dental treatment can be secured. It does not include continued treatment or follow-up treatment for any injury or illness.

x x x x x x x x x

[17] TSN dated January 28, 1997, Cross-Examination of Hao, pp. 25-27.

[18] Conn and Conn, *Current Diagnosis 5*, p. 145.

[19] *Id.*, pp. 146-147. See also Harrison, *Principles of Internal Medicine*, Fifth Edition, pp. 1735-1736.

time to rest and administering symptomatic medications. Dr. Hermes Frias enlightened the trial court thereon:

COURT

Q: He contracted chicken pox?

A: Yes, your honor, which is a self limiting disease.

Q: What do you mean by that?

A: **Meaning to say, your Honor, if it is properly taken care of, it will not reach to the point of seriously affecting the patient and there is a certain period wherein the chicken pox will heal**.[20]

ATTY. SANTILLAN

Q: **That is you said if taken care of at the initial?**

A: **Yes, sir.**[21]

x x x x x x x x x

COURT

Q: **Will you clarify. You said that the disease is self limiting disease.**

A: **Yes your honor.**

Q: **So more or less, even without any medicine or without any medical attendance if it is self limiting disease, it will heal by itself, Isn't it?**

A: Yes, your Honor, if you would let me clarify on that thing, your Honor. **Chicken pox has no medicine, it is being treated symptomatically. What I mean that it has no medicine. There are medicines that are being tested that claim to have anti-viral activities but it cannot be positively claimed that there is a medicine solely for chicken pox. So chicken pox, you, Honor, is being treated symptomatically. If the patient having chicken pox will have fever, he will be given anti-fever medicine and if**

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[20] TSN dated June 25, 1996, Direct Testimony of Dr. Frias, pp. 12-13.

[21] *Id*.

the patient have pneumonia due to chicken pox, that is when the appropriate antibiotics is given.

Q: **If it is self limiting, doctor, can you not say you don't even have to confine him in the hospital?**

A: **Yes, your honor, but the patient should be confined in bed.**[22]

Based on the foregoing testimony of Dr. Frias, it is imperative that the chicken pox-afflicted patient should be confined in bed to rest during the initial stages of the disease; otherwise, the complications of chicken pox, which are deadly, may set in.

Dr. Frias explained the probability of the complications of chicken pox affecting the patient, *viz*:

A: **Among the complications of chicken pox especially in adults that contacted it is pneumonia, then another complication is the brain, encephalitis, those are the complications, sir.**

Q: In your medical opinion, doctor, when can these complications set in?

A: **There is no specific time on when these complications set in; but if the patient is properly taken care of during his illness having chicken pox, these complications usually do not set in. The book states that complications of pneumonia is around, if I am not mistaken, 20% to 30% of patients contacting chicken pox.**

Q: **In your medical opinion also, doctor, if the patient who has chicken pox do(es) not rest and continue(s) working and without medication, would your answer still be the same as to the time when these complications will set in?**

A: **Without proper rest and medication, your Honor, the chances of complication setting in is much higher than in a patient who is fully rested and receiving symptomatic medications.**[23]

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[22] *Id*., pp. 19-20.

[23] *Id*., pp. 17-19.

With the records showing that OBCC did not have the graduate first aider or clinic in the workplace, Bladimir received no first aid treatment from April 9, 1995 (when he contracted chicken pox) until April 12, 1995 (when he was rushed to the community hospital after collapsing in the workplace). Also, Bladimir was not allowed to have bed rest, considering that Hao instead required him to continue on the job despite his affliction, denying the latter's request to be allowed to rest in his parents' home in Capas, Tarlac, all because Hao was due to leave for Hongkong for the Holy Week break and had no one else to remain in the premises in his absence. Hao's utter lack of concern and solicitude for the welfare of Bladimir not only contravened the letter and spirit of the *Labor Code* but also manifested a callous disregard of Bladimir's weakened condition.

It is not to be lost sight of, too, that, even assuming that Hao really told Bladimir to take a rest in the company barracks upon his affliction with chicken pox on April 9, 1995, the petitioners should still answer for the wrongful death because the barracks provided to Bladimir and others (free of charge, the Majority point out) were unsuitable for any employee afflicted with chicken pox to have the requisite complete rest. The barracks consisted of a small, cramped, and guardhouse-like structure constructed of wood and plywood that even raised the chances for chicken pox to spread. Under the circumstances, the petitioners' neglect of the welfare of Bladimir became all the more pronounced.

2.b.
Bladimir succumbed to complications of chicken pox after petitioners refused to let him have complete rest

There are two sides of whether or not Bladimir was afforded the sufficient time to rest. The first is Hao's claim that Bladimir took a three-day rest, more particularly, on April 9, 10 and 11, 1995. The second is the respondents' insistence that Hao still required Bladimir to remain on the job from April 9 to April 12, 1995 despite Bladimir's several requests to be allowed to go to his parents' home in Capas, Tarlac to have the much needed rest, because Hao was then set to travel to Hongkong

during the Holy Week break and desired Bladimir to man the premises in his absence.

The Majority adopts the first, despite Hao supporting his claim with only his mere say-so, but I incline towards the respondents' version, because of the *objective* confirmation of the version by *two* witnesses, who coincided in their declarations that Bladimir was on the job on April 11, 1995 and April 12, 1995, contrary to Hao's claim.

The first objective witness was Ariel Taruc, who was presented by the respondents. Taruc testified that he saw Bladimir working, cleaning the company premises and vehicles, and manning the gate on April 11, 1995. Taruc stated, too, that Bladimir, already looking weak and full of rashes in his body, wanted very much to go home to Capas, Tarlac to rest during the Holy Week break but his manager (Hao) did not give him permission to do so. I excerpt Taruc's relevant testimony, to wit:

Q: Now on April 11, 1995, what time did you and Mr. Cubacub talk?

A: 9:00 o'clock in the morning, sir.

Q: **Can you tell this Honorable Court why you went there on April 11, 1995?**

A: **I wanted to invite him to go home because that was a Holy Week, sir.**

COURT

Holy Tuesday, you did not work on that day?

WITNESS

We did not have work on that day ma'am.

COURT

Alright, proceed.

ATTY. S. SANTILLAN:

Q: In what particular place you met Bladimir Cubacub on April 11, 1995 at 9:00 o'clock in the morning?

WITNESS

A: At the guard house, sir.

Q: Guard house of what company if you know or what place?

A: Ocean Builders, sir.

Q: **What was Bladimir doing there at the guard house when you arrived?**

A: **He was assigned in that guard house, sir.**

Q: **Can you tell this Honorable Court what you and Bladimir talked about during that meeting at 9:00 o'clock on April 11, 1995?**

A: **I also invited Bladimir to go home on Holy Thursday, however, he informed me that he could not go home because he was not allowed by his manager to go home as his manager was going somewhere, sir.**

Q: **Now, can you tell this Honorable Court also if you know what was the physical condition of Bladimir at the time you are talking to him?**

A: **At that time, sir, his face was full of chicken pox, sir, and he looks weak, sir.**

Q: **Now, was that the only subject of conversation between you and Bladimir Cubacub at the time you visited him?**

A: **I was inviting him to go home that week, however he did not want to go home, in fact he showed his chicken pox in his stomach and he informed me that he will be going home when I come back for work, sir.**

Q: **Will you tell the Court, you describe what those *bulutong* looks like?**

A: ***"Butil-butil"* with pus and his face, both arms and his stomach were full of chicken pox, and they look like boil (*pigsa*), mam**.[24]

The second objective witness was Ignacio Silangga, an employee of OBCC whom the petitioners presented on their

[24] TSN dated August 6, 1996, Direct Testimony of Taruc, pp. 7-10.

side. Like Taruc, Silangga saw Bladimir working on April 11, 1995 by cleaning the company premises and vehicles, and opening and closing the gate of the premises, as the following except of his testimony bears out:

Q: On April 11?

A: On April 11, I saw him, sir.

Q: Also working in the premises?

A: He was cleaning the vehicle, sir.

Q: So aside from cleaning the premises, opening, closing the gate, you also see him cleaning the vehicles of the corporation, is that what you mean?

A: Yes, sir, that is his duty or job.

COURT

Q: Cleaning the vehicle is his job?

A: Yes, ma'am.[25]

In addition, Silangga attested that Bladimir continued on the job on April 12, 1995, instead of resting. In fact, Silangga recalled Bladimir requesting to bring him home to Tarlac ("bring me to Tarlac") because he wanted his own brothers and sisters to take care of him and to rest. The relevant excerpt of Silangga's testimony follows:

Q: Can you recall to us what date was that when you last saw him before you saw him at the hospital?

A: **On April 12, 1995, sir, I came from Manila because I secured the Plate Number of Mr. Dennis Hao, sir**.

Q: **And, from Manila, where did you go?**

A: **Upon entering the gate of your company, Bladimir was there and he was the one who opened the gate for me, sir.**

Q: And, when Bladimir opened the gate for you on April 12, 1995, was he in his ordinary self or usual ordinary self?

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[25] TSN dated December 3, 1996, Cross Examination of Silangga, pp. 11-12.

A: Yes, sir.

Q: **Alright, so, after opening the gate of Ocean Builders, do you remember what happened next?**

A: **Bladimir Cubacub calls me "*Kuya*," sir, and he told me, "*Kuya*, can you bring me to Tarlac," sir.**

Q: **And, did Bladimir Cubacub tell you the reason why he wants to be brought to Tarlac?**

A: **He told me that he wants to take a rest, sir.**

Q: **And, did he also tell you the reason why he wanted to take a rest?**

A: **He did not tell me the reason, sir. He just told me that he wants to take a rest, so, his brothers and sisters could take care of him, sir.**

Q: **Did he not also tell you the reason why he wants his brothers and sisters to take care of him?**

A: **What I know, he was suffering from chicken pox, sir.**[26]

With the aforequoted testimonies definitely confirming that Bladimir worked *until* April 12, 1995 (at least) despite his greatly weakened condition, I wonder how and why the RTC still held that Bladimir was solely responsible for the fatal consequence of his affliction, and why the Majority agrees with the RTC and completely absolves the petitioners from responsibility and liability.

2.c.
Bladimir contracted chicken pox from a co-employee

Citing the lack of any finding to that effect in the decisions of both lower courts, the Majority downplays the cause of Bladimir's chicken pox and ignores that Bladimir contracted the chicken pox from a co-worker.

I cannot go along with the Majority. It will be odd if the Court refuses to rectify the omission of both lower courts in

[26] TSN dated November 12, 1996, Direct Testimony of Silangga, pp. 9-11.

missing out on such an important detail as the causation of the chicken pox and ignores the evidence to that effect. The silence of the lower courts ought not to impede the rectification, for ours is the foremost duty, as the ultimate dispenser of justice and fairness, to make judicial decisions speak the truth.

Thus, I excerpt from Hao's testimony the portion that incontrovertibly shows that he well knew that Bladimir had contracted his chicken pox from a co-worker, in order to show how Bladimir contracted the chicken pox from a co-worker, *viz*:

> Q: Personally, have you experience from chicken pox (sic), do you know whether it is something serious or what kind disease?
>
> A: **Actually, before Bladimir Cubacub was afflicted with chicken pox from one of his co-employee who is also residing in the barracks who was afflicted with chicken pox**, that is why I saw that chicken pox could ill in about three (3) days, sir.[27]

Clearly, it was Hao who himself confirmed that Bladimir had contracted his chicken pox from a co-worker.

2.d.
Hao's acts after Bladimir collapsed and was rushed to the hospital were superficial, too little, and too late

It is true that Hao directed Silangga to bring Bladimir to the community hospital after he collapsed in the workplace, giving ₱1,000.00 for Bladimir's medical bill. But Hao's solicitude was superficial (if not feigned), too little, and too late.

Superficial (if not feigned), for, although Bladimir, as a stay-in employee of OBCC under Hao's supervision, was Hao's responsibility, Hao had not earlier done anything to prevent Bladimir from contracting chicken pox by isolating Bladimir from contact with the afflicted co-worker. Instead, Bladimir

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[27] TSN dated January 7, 1997, Direct Testimony of Hao, pp. 24-25.

and the afflicted co-worker were forced to stay together in their crowded barracks. In addition, Hao showed no further interest in seeing to the condition of Bladimir and in ascertaining whether the community hospital to where Bladimir had been rushed upon Hao's directive had the adequate facilities and medical personnel to attend to Bladimir. Obviously, the community hospital was not adequate, because Bladimir's condition deteriorated until he fell into coma on April 13, 1995, the day following his admission.

Too little, because ₱1,000.00 was a mere pittance when compared with OBCC's undeserved savings from not complying with its legally mandated obligation to provide first aid treatment to its employees, and from not doing more after Bladimir had been rushed to the community hospital by Silangga.

Too late, because by the time of rushing him to the community hospital Bladimir had already collapsed due to the irreversible effects of the deadly complications of the 3-days old affliction.

2.e.
Conclusion

Unlike the Majority, I find a direct link between the petitioners' acts and omissions and Bladimir's death. The chain of the events from the time when Bladimir was exposed to the chicken pox afflicting his co-worker due to their staying together in the cramped space of the workers' barracks, to the time when Hao directed Silangga to rush the collapsed Bladimir to the community hospital, and until Bladimir succumbed in QCGH indicated a natural and continuous sequence, unbroken by any efficient intervening cause, demonstrating how their gross neglect of their employee's plight led to or caused the wrongful death.

Contrary to the Majority's conclusion, Hao willfully disregarded Bladimir's deteriorating condition and prevented him from taking time off from his job to have the much needed complete rest. Hao's attitude enabled the complications of chicken pox, like pneumonia, to set in to complicate Bladimir's condition. Hao did not need to have a medical background to realize Bladimir's worsening condition and the concomitant perils, for

such condition was not concealed due to Bladimir's body notoriously bearing the signs of his affliction and general debility. By the time Hao acted and had Bladimir brought to the community hospital, the complications of the disease were already irreversible.

Undoubtedly, the petitioners did not use that reasonable care and caution that an ordinarily prudent person would have used in the same situation.

3.
Dr. Frias' death certificate was more reliable on the cause of death

The Majority do not consider the later death certificate issued by Dr. Frias (which included chicken pox among the causes of death) more reliable than the death certificate issued on April 17, 1995 by the QCGH (which did not include chicken pox among the causes of death), mainly because Dr. Frias could not be considered as Bladimir's attending physician, he having merely ordered Bladimir's transfer to the QCGH after seeing him at the Caybiga Community Hospital; and because the QCGH death certificate was a public document whose entries are presumed correct unless their inaccuracy is first shown by positive evidence.

I disagree with the Majority.

Although, concededly, any competent health professional can confirm that death has occurred, only a physician who attended the patient during his last illness can execute a death certificate. Anent the task, the physician provides an opinion on the cause of death and certifies to such cause of death, not to the fact of death. The physician is not required to confirm that life is extinct; or to view the body of the deceased; or to report the fact that death has occurred. The death certificate is not a medical document, but a civil one intended to serve various legal purposes.

Was Dr. Frias qualified to execute the second death certificate?

I answer in the affirmative.

I deem to be uncontroverted that Dr. Frias medically attended to Bladimir during his last illness, considering that Dr. Frias

was the physician who coordinated Bladimir's transfer to QCGH from the Caybiga Community Hospital based on his professional assessment of the true medical condition of Bladimir and of the urgent need for the transfer to another medical institution with better facilities.

In contrast, the physician who executed on April 17, 1995 the death certificate for Bladimir in QCGH did not attend to Bladimir during his last illness. This fact is unquestionably borne out in the death certificate itself, in which the physician ticked the box denominated as Question No. 20 in the form for the death certificate, thereby stating *that he had not attended to the deceased*.[28]

Moreover, Dr. Frias testified that the QCGH death certificate was prepared principally to enable the transport of the remains of Bladimir from Quezon City to Tarlac. Upon seeing the incompleteness of the QCGH death certificate on the causes of death, however, Dr. Frias felt compelled to execute another death certificate, as the following excerpt of his testimony reveals:

Q: **The Court would like to be clarified, Dr. Frias. Who is authorized to issue a death certificate based on the rules and regulations of the Department of Health**?

A: **Attending physicians, your Honor, and any doctor who saw the patient**.

COURT

Q: **Could you reconcile why there are two (2) death certificates in this case, one issued by the hospital where the patient died and one which you issued?**

A: **They can be reconciled your Honor . . .**

Q: **No, I'm not asking for reconciliation. I'm just asking why there are two death certificates?**

A: **Yes, it was given to him so that the patient can be transported while I made the other one to show how**

[28] Exhibit D.

seriously ill the patient was at the time of his death, anyway I initially saw the patient and I was with him all the way up to the time he was transferred to the Quezon City General Hospital, your Honor.

Q: **Did I hear you correctly when you said that you issued the certificate after you saw the death certificate issued by the Quezon City General Hospital?**

A: **Yes, your Honor.**

Q: **The Court is asking why is there a need for another death certificate when in fact you said there was already a death certificate that was already issued if it is for transporting the corpse?**

A: **I made one, your Honor. The answer is I made one so to show the real cause of death of the patient. I think in my opinion, the death certificate of the Quezon City General Hospital is inadequate to show the real condition of the patient**.[29]

Based on the foregoing, therefore, that Dr. Frias had the basic competence to execute the second death certificate, and that such death certificate was the more reliable on the causes of Bladimir's death should be beyond debate.

ACCORDINGLY, I vote to deny the petition for review on *certiorari*, and to affirm the decision rendered on June 22, 2001 by the Court of Appeals.

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[29] TSN dated June 25, 1996, Cross-Examination of Dr. Frias, pp. 41-43.

FIRST DIVISION

[G.R. No. 157717. April 13, 2011]

HEIRS OF MAXIMINO DERLA, namely: ZELDA, JUNA, GERALDINE, AIDA, ALMA, all surnamed DERLA; and SABINA *VDA. DE* DERLA, all represented by their Attorney-in-Fact, ZELDA DERLA, *petitioners, vs.* **HEIRS OF CATALINA DERLA *VDA. DE* HIPOLITO, MAE D. HIPOLITO, ROGER ZAGALES, FRANCISCO DERLA, SR., JOVITO DERLA, EXALTACION POND, and VINA U. CASAWAY, in her capacity as the REGISTER OF DEEDS OF TAGUM, DAVAO DEL NORTE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; DEFINED; ELEMENTS, EXPLAINED. — Literally, *res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. In *Villanueva v. Court of Appeals*, we enumerated the elements of *res judicata* as follows: (a) The former judgment or order must be final; (b) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case; (c) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and (d) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two (2) actions are substantially between the same parties.

2. ID.; ID.; ID.; FINAL AND EXECUTORY; THE SUPREME COURT HELD THAT A FINAL AND EXECUTORY

JUDGMENT, NO MATTER HOW ERRONEOUS, CANNOT BE CHANGED EVEN BY THE SUPREME COURT; SUSTAINED. — This Court has held time and again that a final and executory judgment, no matter how erroneous, cannot be changed even by this Court: Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It 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. x x x.

3. ID.; ID.; ID.; DOCTRINE OF *RES JUDICATA*; APPLICABLE WHEN THE ADMINISTRATIVE PROCEEDINGS TAKE ON AN ADVERSARY CHARACTER. — While it is true that this Court has declared that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers, we have also limited the latter to proceedings purely administrative in nature. Therefore, when the administrative proceedings take on an adversary character, the doctrine of *res judicata* certainly applies. As this Court held in *Fortich v. Corona:* The rule of *res judicata* which forbids the reopening of a matter once judicially determined by competent authority applies as well to **the judicial and quasi-judicial acts of public, executive or administrative officers and boards acting within their jurisdiction** as to the judgments of courts having general judicial powers.

APPEARANCES OF COUNSEL

Law Firm of Roberto P. Halili and Associates for petitioners.
Honesto A. Cabarroguis for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to modify the August 30, 2002 Decision[2] and March 17, 2003 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 63666, which affirmed the November 17, 1998 Order[4] of the Regional Trial Court (RTC) of Panabo, Davao, Branch 4, in Civil Case No. 97-15.

The facts, as culled from the records of the case and the November 11, 1991 Decision[5] of the Office of the President in O.P. Case No. 4732, as cited by both the petitioners and respondents, are set forth below:

The petitioners are the surviving heirs of the late Maximino Derla (Derla). With his first wife, the late Leonora Padernal, Derla had two children, Zelda and Juna. His children by his second wife and surviving widow Sabina Perlas were Geraldine, Aida, and Alma. Zelda acts as the petitioners' attorney-in-fact.

Respondent Catalina *Vda. de* Hipolito (Catalina) is Derla's cousin who was married to the late Ricardo Hipolito (Hipolito), having one daughter, Mae Hipolito. Except for Vina U. Casaway, the respondents, by virtue of individual sales (fishpond) patents issued by the Department of Agriculture and Natural Resources (DANR), are the registered owners of a 23.9-hectare fishpond area (the subject fishpond area) in Sitio Biyawa, Barrio Panabo, Municipality of Tagum, Davao under Original Certificates of

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[1] Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 50-66; penned by Associate Justice B.A. Adefuin-De la Cruz with Associate Justices Wenceslao I. Agnir, Jr. and Regalado E. Maambong concurring.

[3] *Rollo*, pp. 67-68; penned by Associate Justice B.A. Adefuin-De la Cruz with Associate Justices Eubulo G. Verzola and Regalado E. Maambong, concurring.

[4] *Id.* at 469-484.

[5] *Id.* at 536-549.

Title (OCT) Nos. P-29095, 29096, 29098, 29099, 29100, 29101, 29102, and 29103.[6] Vina U. Casaway, being the Registrar of the Register of Deeds of Tagum, Davao del Norte, was impleaded as a mere nominal party.

Twenty and five tenths (20.5) hectares of the subject fishpond area were originally maintained by Derla under Ordinary Fishpond Permit No. F-1080-F issued on March 2, 1950.[7] On May 8, 1950, Derla executed a Special Power of Attorney[8] in favor of Hipolito to represent him in all matters related to this fishpond area.[9] On the same date, Derla and Hipolito also executed a "Contract"[10] wherein Derla acknowledged Hipolito's rights in the 20.5-hectare fishpond area. In the "Contract," Derla stated that Hipolito owned one-half of the fishpond area, and that it was only for convenience that the permit was issued in Derla's name. The "Contract" also stated that Hipolito had been bearing all the expenses in relation to the fishpond area, subject to reimbursement once it became productive. Derla and Hipolito also stipulated therein that they could not alienate or transfer their rights to the fishpond area without the consent of the other.[11] On October 8, 1953, Derla executed a document captioned as "Transfer of Rights in Fishpond Permit" wherein he transferred all his rights in the fishpond area to Hipolito for Ten Thousand Pesos (₱10,000.00).[12] Executed together with this document was Hipolito's own affidavit/promissory note wherein he stated that he agreed to buy his co-owner Derla's one-half undivided share for the initial amount of Four Thousand Five Hundred Pesos (₱4,500.00) plus Five Hundred Pesos (₱500.00) as rental for the year 1952. Hipolito also promised to pay another Four

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[6] Records, pp. 31-46.

[7] *Id.* at 49.

[8] *Rollo*, p. 69.

[9] *Id.*

[10] Records, p. 51.

[11] *Id.*

[12] *Id.* at 52.

Thousand Five Hundred Pesos (₱4,500.00) once the conflict[13] regarding the subject fishpond area has been settled and arranged.[14]

On January 19, 1954, Hipolito filed Fishpond Application No. 11071 over the 20.5-hectare fishpond area (later reduced to 16.4 hectares due to the construction of the Biyawa Road at Panabo del Norte)[15] covered by Derla's permit. This was approved on August 10, 1956 under Ordinary Fishpond Permit (Transfer) No. F-3054-L (Hipolito's fishpond area).

On October 15, 1960, Derla filed his own Fishpond Application No. 21335 over a 7.5-hectare fishpond area adjoining Hipolito's fishpond area. On November 21, 1960, Hipolito charged Derla with Qualified Theft before the then Justice of the Peace Court of Panabo for gathering and carrying away fish from Hipolito's fishpond. Derla, in his defense, claimed that he was still part-owner of the fishpond when he harvested the fish.[16] On the strength of the "Transfer of Rights in Fishpond Permit" and Hipolito's Affidavit that he and Derla are co-owners of the fishpond and that he promised to pay Derla after the settlement of the fishpond boundary conflict, the court acquitted Derla on November 29, 1960.[17]

On March 8, 1962, the Director of Fisheries approved Derla's fishpond application. On November 6, 1967, the Secretary of Agriculture and Natural Resources (SANR), upon Hipolito's appeal, set aside the Director of Fisheries' order and declared

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[13] This conflict was about the total areas of fishpond granted to three permitees: Maximino Derla, Glicerio Dondoy, and Gerardo Carisma. The fishpond areas granted in their permits overlapped each other's areas. On November 5, 1954, the Department of Agriculture and Natural Resources awarded the 20 hectares (later on corrected to 20.5 as originally stated in Derla's Fishpond Permit; records, p. 58) to Derla, the area of six hectares north of Derla to Dondoy, and all the areas north of Dondoy to Carisma. (Records, pp. 55-57.)

[14] Records, p. 53.

[15] *Rollo*, p. 53.

[16] *Id.* at 425.

[17] *Id.* at 262.

that the 7.5-hectare fishpond area Derla applied for was included in the the area covered by Hipolito's Fishpond Permit No. F-3054-L.[18]

On December 5, 1967, Derla filed a complaint for "Declaration of Nullity of Transfer of Right in a Fishpond Permit" against Hipolito before the Court of First Instance (CFI), Branch II, Davao City.[19] This was docketed as Civil Case No. 5826 and was dismissed on December 8, 1969 on the ground of prescription and estoppel.[20] The CFI held that the prescriptive period to bring an action to annul a contract based on fraud, mistake or want of consideration should be counted from the date of discovery, and in case of public documents, the date of discovery is the date the public document was executed. The CFI held that since the Transfer of Rights in Fishpond Permit was executed in 1953, the action to annul has prescribed. As Derla claimed that he only found out about the fraudulent transfer in 1960 when Hipolito instituted a criminal case against him, the CFI maintained that even if the date of discovery were to be counted from 1960, his complaint was still filed beyond what the prescriptive period allowed. Furthermore, the CFI said that Derla could not be permitted to assail the very document he relied on to obtain his acquittal in the criminal case filed against him.[21] Derla elevated his cause to the Court of Appeals and this was docketed as CA-G.R. No. 47070-R.

Meanwhile, on October 27, 1969, the Office of the President affirmed *in toto* the SANR's November 6, 1967 decision. On April 20, 1970, the Commissioner of Fisheries issued Hipolito an Amended Fishpond Permit to cover a total fishpond area of 23.9 hectares, including the 7.5 hectares applied for by Derla.

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[18] *Id.* at 537.

[19] *Id.* at 257.

[20] *Id.* at 257, 264-266.

[21] *Id.* at 265-266.

On August 20, 1970, Hipolito, pursuant to Republic Act No. 5743,[22] filed Sales (Fishpond) Application No. (VIII-2) 9 with the Bureau of Lands over the subject fishpond area covered by his Fishpond Permit No. F-3054-L. The Municipality of Panabo opposed Hipolito's application on the ground that it will disrupt the development of Panabo. The SANR however, recommended the denial of this opposition as the authorities concerned had certified that the area applied for was not needed by the government for any future public improvement and that it was suitable for fishpond purposes. On February 11, 1972, the Office of the President, through then Acting Assistant Executive Secretary Ronaldo B. Zamora agreed with the SANR's position that Hipolito had already acquired a vested right over his fishpond area and the enactment of Republic Act No. 5743 could not *ipso facto* divest him of such right; hence, the Municipality of Panabo's opposition was dismissed and Hipolito's Fishpond Sales Application was given due course. The Municipality of Panabo filed two motions for reconsideration but both were denied by the Office of the President on November 2, 1972 and January 24, 1973.[23]

On September 26, 1973, the Court of Appeals also dismissed Derla's appeal of the CFI's December 8, 1969 ruling in Civil Case No. 5826. The Court of Appeals, which affirmed *in toto* the CFI's decision, charged Derla with double costs as the appeal appeared to have been prosecuted solely for dilatory purposes.[24] Derla's petition for review on *certiorari*, docketed as G.R. No. L-38230, was likewise denied by this Court in a Resolution dated February 22, 1974, and this became final and executory on March 27, 1974 as certified in an Entry of Judgment dated April 18, 1974.[25]

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[22] An Act Declaring Certain Parcels of Land in the Municipality of Panabo, Province of Davao, As Agricultural and Alienable Lands and for Other Purposes, June 21, 1969.

[23] *Rollo*, pp. 538-539.

[24] *Id.* at 270.

[25] *Id.* at 255.

Meanwhile, the Municipality of Panabo filed with the CFI of Tagum, Davao del Norte, Civil Case No. 45 for *Certiorari* with Preliminary Injunction against Hipolito, Assistant Secretary Zamora, the Acting Director of Lands and the District Lands Officer. During the pendency of the case, a Municipal Judge of Panabo, Francisco Consolacion, wrote to a certain Antonio Floirendo about Hipolito's fishpond sales application.[26] On January 27, 1974**,** then President Ferdinand E. Marcos wrote the following marginal note on Judge Consolacion's letter:

Sec. Tangco
Asst. Sec. Zamora:

If the land applied for by Hipolito is sold to him, it will prejudice the national interest as the land is in the middle of the national projects — a pier and warehouses.

So his sales application should be rejected subject to reimbursement of Hipolito's expenses and the land transferred to the Municipality of Panabo.

Sgd.
F.E. Marcos[27]

Consequently, the Office of the President revoked its February 11, 1972 ruling on Hipolito's application in a Letter Decision[28] dated February 5, 1974. The Office of the President ordered the transfer of the subject fishpond area to the Municipality of Panabo upon payment of the expenses incurred by Hipolito.[29] Hipolito's motion to reconsider this decision was denied on July 23, 1974.[30]

On August 19, 1974, Hipolito filed a Petition for *Certiorari* with the CFI of Davao, praying for the declaration of nullity of the February 5, 1974 and July 23, 1974 Decisions of the Office

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[26] *Id.* at 540.

[27] *Id.* at 56.

[28] *Id.* at 541

[29] *Id.* at 427-428.

[30] CA *rollo*, p. 326.

of the President and the reinstatement of the February 11, 1972 Decision. On March 9, 1975, the CFI issued a writ of preliminary injunction to maintain the *status quo* and restrain the Municipality of Panabo from performing any act in connection with the subject fishpond area.

Despite this injunction, the Municipality of Panabo, on September 12, 1985, passed Resolution No. 176 and leased 3.5 hectares each to Zelda Derla, Melencio Panes, and Lovigildo Dolor for a rental equivalent to twenty percent (20%) of the gross sales of all the produce of their leased areas.[31]

On November 3, 1975, the CFI of Davao dismissed Hipolito's petition on the belief that former President Marcos' directive was an instruction or an act promulgated, issued or done by the president which has the force and effect of law.[32] The Court of Appeals likewise dismissed Hipolito's appeal docketed as CA-G.R. No. SP-05241[33] on July 26, 1977. An Entry of Judgment having been made, this Decision became final and executory on August 26, 1977.[34]

Sometime after the EDSA Revolution, Catalina filed a petition with the Office of the President for the Revival of the Fishpond Sales Application No. (VIII-2) 9 of her late husband Hipolito. This was docketed as O.P. Case No. 4732 and in support of her petition, Catalina alleged that she was a victim of the Marcos Regime and her fishpond was taken away from her despite a final and executory decision in her favor; that contrary to the allegations of the then mayor of Panabo, the approval of their fishpond sales application will not disrupt the municipality's development plan; that the Office of the President had already categorically ruled that Republic Act No. 5743 cannot divest Hipolito of his vested rights over the fishpond area; that the February 11 and November 2, 1972 Decisions have already

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[31] *Rollo*, p. 542.

[32] *Id.* at 528.

[33] *Id.* at 521-532.

[34] CA *rollo*, p. 240.

lapsed into finality; and that the supposed conversion of the fishpond area into a fishery school was but a mere subterfuge to unjustly deprive the Hipolitos of their right over the fishpond area.[35]

Catalina's petition was referred to the then Ministry of Agriculture and Food (now Department of Agriculture) for an updated comment and recommendation. On April 18, 1988, the Ministry, in its return communication[36] to the Office of the President, commented that the subject fishpond area could not be fully utilized and were in excess of the Municipality of Panabo's needs as certain portions were leased out; that the amount of One Hundred Thousand Pesos (₱100,000.00) paid as reimbursement to Hipolito was insufficient considering that Hipolito invested a total of Two Hundred Fifty-Eight and Six Hundred Pesos (₱258,600.00) in the development and improvement of the subject fishpond area; that Catalina had not been deprived of her right to renew her late husband's fishpond permit or her right to apply for a fishpond lease contract, and that in fact, under Section 23 of Presidential Decree No. 704, public lands suitable for fishpond purposes shall be sold to applicants whose applications have been processed and approved on or before November 6, 1972. The Ministry found that based on the records, the Hipolitos were not accorded due process when they were deprived of the subject fishpond area in favor of the Municipality of Panabo, thus recommended that Catalina's petition be given due course, subject to her refund of the One Hundred Thousand Pesos (₱100,000.00) she had received as reimbursement from the Municipality of Panabo.[37]

On the basis of the above findings and recommendation, the Office of the President, through then Executive Secretary Franklin M. Drilon, granted Catalina's petition in a Resolution[38] dated November 11, 1991, with the following dispositive portion:

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[35] *Rollo*, p. 430.

[36] *Id.* at 543.

[37] *Id.* at 543-544.

[38] *Id.* at 536-549.

IN VIEW OF THE FOREGOING, and in the interest of more enlightened, impartial and substantive justice, the instant petition is hereby GRANTED. Accordingly, the Bureau of Fisheries and Aquatic Resources is hereby directed to process and approve Sales (Fishpond) Application No. (VIII-2)9 of the late Ricardo Hipolito covering 23.9 hectares situated at San Vicente, Biyawa, Panabo, Davao del Norte, and thereafter issue the corresponding sales patent or certificate of title, excluding, however, therefrom a strip of one hundred (100) meters from the shoreline at high tide. It is further hereby directed that petitioner Catalina D. Hipolito refund to the Municipality of Panabo, Davao del Norte, the sum of ₱100,000.00 she received therefrom in consideration of the entire fishpond area.[39]

Deciding in Catalina's favor, the Office of the President held that the late Hipolito, having complied with all the terms and conditions for an award of the subject fishpond area, had already acquired a vested right therein.[40] The Office of the President also applied the doctrine of *res judicata* as its February 5, 1974 decision rejecting Hipolito's fishpond sales application was based on then President Marcos' marginal note, which it found to be legally and constitutionally suspect for having been issued after the February 11 and November 2, 1972 decisions had become final and executory. The Office of the President also ruled on the prohibition under Presidential Decree No. 43, saying that the SANR at that time directed the continuance of the processing of the pending fishpond sales application subject to a final inspection and verification.

On January 28, 1992, the petitioners filed a Motion for Reconsideration of the November 11, 1991 Resolution of the Office of the President.[41] Mesdames Profitresa Dolor (Dolor) and Amelita Panes (Panes), as lessees of portions of the subject fishpond area, also filed their Protest with Motion for Reconsideration on March 11, 1992.

On August 2, 1992, the Office of the President denied the petitioners' motion due to the fact that not only was it filed

[39] *Id.* at 549.

[40] *Id.* at 545.

[41] *Id.* at 550.

beyond the reglementary period, but also because of petitioners' failure to timely assert their claims considering that the subject fishpond area had been a subject of a long controversy between the Hipolitos and the Municipality of Panabo. Dolor and Panes' protest with motion for reconsideration was likewise dismissed on the ground that their claims to the subject fishpond area were anchored on lease contracts which were legally questionable for having been executed by the Municipality of Panabo at a time when it was judicially restrained from allowing private persons to enter, occupy or make any kind of construction on the subject fishpond area.[42]

On September 30, 1992, the petitioners filed an unsigned "Second Motion for Reconsideration" which was denied by the Office of the President in an Order[43] dated February 26, 1993 as the November 11, 1991 Resolution sought to be reconsidered had already become final. The Order also required the records of the case to be remanded to the Bureau of Fisheries and Aquatic Resources for immediate execution/implementation of the November 11, 1991 Resolution.

Upon the Department of Environment and Natural Resources' (DENR) request, the Office of the President declared its November 11, 1991 Resolution final and executory in an Order dated April 27, 1995.[44]

On May 22, 1995, the petitioners wrote then Executive Secretary Ruben Torres, praying for the suspension of the implementation of the November 11, 1991 Resolution in O.P. Case No. 4732.[45] However, this petition was subsequently withdrawn in another letter dated June 27, 1995.[46]

On February 26, 1997, the petitioners filed a complaint for the Annulment and Cancellation of Original Certificates of Title

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[42] *Id.* at 550-554.

[43] *Id.* at 555-556.

[44] *Id.* at 271-277.

[45] *Id.* at 564-566.

[46] *Id.* at 567-568.

(OCT) Nos. P-29095, 29096, 29098, 29099, 29100, 29101, 29102, and 29103 and Damages against the respondents before the RTC of Panabo, Davao. This was docketed as Civil Case No. 97-15.[47]

In an Order[48] dated November 17, 1998, the RTC dismissed the complaint on the following grounds:

> WHEREFORE, on the ground of prior judgment, statute of limitations, waiver, abandonment and/or estoppel pursuant to pars. (e) and (f), Sect. 1, Rule 16 of the 1997 Rules of Civil Procedure, the complaint is hereby DISMISSED, and the motion to cite the plaintiffs in contempt of court for alleged violation of the non-forum shopping circulars of the Supreme Court is DENIED.[49]

The petitioners asked the Court of Appeals to reverse and set aside the RTC Order in their appeal docketed as CA-G.R. CV No. 63666. On August 30, 2002, the Court of Appeals dismissed the appeal on the basis of *res judicata* and affirmed *in toto* the assailed RTC decision. The petitioners' Motion for Reconsideration was likewise denied for lack of merit on March 17, 2003.[50]

On May 15, 2003, the petitioners filed before this Court a Petition for Review on *Certiorari* seeking the reversal of the August 30, 2002 Decision and the March 17, 2003 Resolution of the Court of Appeals on the strength of the following arguments:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT *RES JUDICATA* LIES IN THIS CASE, RELYING ON THE RESOLUTION OF THE OFFICE OF THE PRESIDENT IN O.P. CASE NO. 4732 DATED NOVEMBER 11, 1991, DISREGARDING THE EARLIER AND FINAL AND EXECUTORY ORDERS OF THE SAME OFFICE OF THE PRESIDENT DATED FEBRUARY

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[47] *Id.* at 572-574.

[48] *Id.* at 469-484.

[49] *Id.* at 484.

[50] *Id.* at 503.

5, 1974 AND JULY 23, 1974, AS WELL AS THE COURT OF APPEALS' DECISION DATED JULY 26, 1977.

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT *RES JUDICATA* APPLIES TO BOTH JUDICIAL AND QUASI-JUDICIAL PROCEEDINGS, OVERLOOKING THE FACT THAT THE DOCTRINE CANNOT APPLY IN ADMINISTRATIVE PROCEEDINGS, AS IN THE INSTANT CASE.

III

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE ISSUE AS TO THE AUTHENTICITY AND GENUINENESS OF THE DOCUMENTS CONSISTING OF A SPECIAL POWER OF ATTORNEY, A CONTRACT DATED MAY 8, 1[9]50, TRANSFER OF RIGHTS IN FISHPOND PERMIT AND PROMISSORY NOTE WHICH WERE ALLEGED BY PETITIONERS AS HAVING BEEN FRAUDULENTLY EXECUTED, HAD BEEN LAID TO REST IN CIVIL CASE NO. 5826 (FOR DECLARATION OF NULLITY OF A TRANSFER OF RIGHT IN A FISHPOND PERMIT FILED BY MAXIMINO DERLA AGAINST RICARDO HIPOLITO BEFORE THE CFI OF DAVAO, BRANCH II, WH[I]CH WAS DISMISSED BY SAID COURT, AND AFFIRMED BY THE COURT OF APPEALS AND THE SUPREME COURT[)].

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE MATERIAL FACTS PRESENTED BY PETITIONERS IN THEIR COMPLAINT BELOW, DOCKETED AS CIVIL CASE NO. 97-15, FOR ANNULMENT AND CANCELLATION OF ORIGINAL CERTIFICATES OF TITLES AND FOR DAMAGES WERE THE SAME MATERIAL FACTS DETERMINED AND RESOLVED LONG BEFORE IN O.P. CASE NO. 4732 THROUGH THE RESOLUTION DATED NOVEMBER 11, 1991, HENCE, THE PRINCIPLE OF *RES JUDICATA* OBTAINED IN THE CASE AT BAR.

V

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS' CLAIM THAT THE ISSUE OF DENIAL OF THE MOTION FOR RECONSIDERATION FILED BY RICARDO HIPOLITO THROUGH THE RESOLUTION OF THE OFFICE OF THE PRESIDENT DATED JULY 23, 1974 CONSTITUTE *RES*

JUDICATA AGAINST THE GRANTING OF THE SALES (FISHPOND) APPLICATION OF HIPOLITO, HENCE THE ISSUANCE OF ORIGINAL CERTIFICATES OF TITLES OVER THE FISHPOND AREA IN QUESTION, WAS A REPETITIVE PROTEST BY PETITIONERS WHICH HAD ALREADY BEEN EXPLAINED IN THE RESOLUTION OF NOVEMBER 11, 1991.

VI

THE DOCUMENTS ATTACHED TO PRIVATE RESPONDENTS' MOTION TO DISMISS THE COMPLAINT AT BAR CANNOT AFFECT THE SUBSTANTIAL RIGHTS OF PETITIONER OVER THE SUBJECT PROPERTY.[51]

This petition had already been denied by this Court in a resolution dated August 23, 2004 for petitioners' failure to sufficiently show that the Court of Appeals committed any reversible error to warrant the exercise of this Court of its discretionary appellate jurisdiction.[52] However, due to petitioners' insistence that their petition be given reconsideration, this Court reinstated their petition and chose to resolve this decades-long controversy once and for all.[53]

Both the RTC and Court of Appeals denied the petitioners' claims on the ground of *res judicata*. The lower courts have similarly held that the annulment of the titles, as sought by the petitioners, relied on the same facts and evidence that were already presented and passed upon in the earlier O.P. Case No. 4732; thus, barred by the doctrine of *res judicata*.

To resolve this issue, it would be instructive to revisit the concept of *res judicata*. Literally, *res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[54] It lays the rule that an existing final judgment or decree rendered on the merits, without fraud

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

[52] *Id.* at 189.

[53] *Id.* at 222.

[54] *Republic of the Philippines (Civil Aeronautics Administration) v. Yu*, G.R. No. 157557, March 10, 2006, 484 SCRA 416, 420.

or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[55]

In *Villanueva v. Court of Appeals*,[56] we enumerated the elements of *res judicata* as follows:

a) The former judgment or order must be final;

b) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case;

c) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and

d) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two (2) actions are substantially between the same parties.[57]

The petitioners assert that there can be no *res judicata* as the November 11, 1991 decision in O.P. Case No. 4732 is null and void for having overturned an earlier final and executory decision and for not giving them an opportunity to be heard. Instead of explaining to this Court why the elements of *res judicata* are not present in this case, the petitioners decided to once again reiterate their worn-out arguments, discussed above, on why the November 11, 1991 decision should not be accorded validity.

We are not convinced.

The November 11, 1991 Decision in O.P. Case No. 4732 has attained finality twenty (20) years ago. It is valid and binding. In fact, on April 27, 1995, the Office of the President issued an

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[55] *Id.*

[56] 349 Phil. 99 (1998).

[57] *Id.* at 109.

Order[58] for the sole purpose of declaring its November 11, 1991 decision final and executory.

This Court has held time and again that a final and executory judgment, no matter how erroneous, cannot be changed even by this Court:

> Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It 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. x x x.[59]

There can be no mistake as to the presence of all the elements of *res judicata* in this case. The parties, although later substituted by their respective successors-in-interest, have been the same from the very beginning and in all the proceedings affecting the subject fishpond area. The concerned agencies and the lower courts have validly ruled on the rights to the subject fishpond area, the validity of the documents covering it, and even the actions associated and related to it. The subject fishpond area is undoubtedly the same subject matter involved in O.P. Case No. 4732 and the petition now before us. With regard to the identity of the causes of action, this Court, in *Mendiola v. Court of Appeals*[60] held that:

> The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment. x x x.[61]

The similarity between the two causes of action cannot be impugned. The facts and evidence which supported Catalina's

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[58] *Rollo*, pp. 271-277.

[59] *Dapar v. Biascan*, 482 Phil. 385, 405 (2004).

[60] 327 Phil. 1156 (1996).

[61] *Id.* at 1166.

petition for revival of Hipolito's fishpond sales application in O.P. Case No. 4732 are the same facts and evidence now before us; hence, the difference of actions in the two cases is of no moment. In O.P. Case No. 4732, the action was to revive Hipolito's fishpond sales application, which, when granted, gave the respondents the right to the subject fishpond area, eventually leading to their ownership over the same. The action in Civil Case No. 97-15, the case that was elevated to become this petition, is for the nullification of the respondents' respective titles to the subject fishpond area on the ground that the respondents have no right thereto. If we allow the nullification of these titles on the ground presented by the petitioners, then we would also be nullifying the decision in O.P. Case No. 4732, because it is the decision in that case which gave the respondents the right to the subject fishpond area.

Notwithstanding the difference in the forms of the two actions, the doctrine of *res judicata* still applies considering that the parties were litigating over the same subject fishpond area. More importantly, the same contentions and evidence as advanced by the petitioners in this case were already used to support their arguments in the previous cause of action.

The petitioners argue that *res judicata* cannot apply to this case because O.P. Case No. 4732 is an *administrative* case.

While it is true that this Court has declared that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers,[62] we have also limited the latter to proceedings purely administrative in nature.[63] Therefore, when the administrative proceedings take on an adversary character, the doctrine of *res judicata* certainly applies.[64] As this Court held in *Fortich v. Corona*:[65]

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[62] *Montemayor v. Bundalian*, 453 Phil. 158, 169 (2003).

[63] *Id.*

[64] *United Pepsi-Cola Supervisory Union (UPSU) v. Laguesma*, 351 Phil. 244, 260 (1998).

[65] 352 Phil. 461 (1998).

The rule of *res judicata* which forbids the reopening of a matter once judicially determined by competent authority applies as well to **the judicial and quasi-judicial acts of public, executive or administrative officers and boards acting within their jurisdiction** as to the judgments of courts having general judicial powers.[66] (Emphasis ours.)

The petitioners cannot deny the fact that though initially, they were not able to participate in O.P. Case No. 4732, the fact that they were able to file a motion for reconsideration not once, but twice, and these motions were resolved by the Office of the President, meant that they were given ample opportunity to be heard. Moreover, a careful reading of the November 11, 1991 Resolution in O.P. Case No. 4732 itself will show that in resolving Catalina's petition to revive her late husband's fishpond sales application, the Office of the President, through then Executive Secretary Franklin M. Drilon, had carefully studied the antecedent facts of the case, and passed upon the rights of all the parties involved, including those of the petitioners, even before they participated in the said case.

The petitioners' complaint in Civil Case No. 97-15, the very same case subject of this petition, is one for declaration of nullity and cancellation of the original certificates of title of the respondents to the very same fishpond area subject of the respondents' petition in O.P. Case No. 4732. To grant petitioners' prayer now would be to nullify the final and executory decision of the Office of the President in O.P. Case No. 4732.

The petitioners also argue that if *res judicata* is to be applied in this case, then it should be applied to bar O.P. Case No. 4732 as it overturned the final and executory decisions of the same office dated February 5 and July 23, 1974. The petitioners are forgetting the fact that before these 1974 decisions were made, the February 11, 1972 decision of the same Office of the President had already become final and executory and the rights conferred to Hipolito by virtue of that final and executory decision had already become vested in him. To follow the petitioners'

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[66] *Id.* at 486.

line of argument therefore, would lead us to the conclusion that if there is any one decision that should be retained, then it should be the first decision that had attained finality. This reasoning finds support in *Collantes v. Court of Appeals*,[67] where we held that when faced with two conflicting final and executory decisions, one of the options the Court can take is to determine which judgment came first. The first judgment to become final and executory is the February 11, 1972 decision of the Office of the President, which is still in favor of Hipolito and the respondents, as Hipolito's successors-in-interest.

To nullify however the November 11, 1991 decision to give way to the reinstatement of the February 11, 1972 decision, would not in any way help in resolving this tedious and protracted debate. The almost 20-year old November 11, 1991 decision in O.P. Case No. 4732 is a well-written decision filled with details and factual antecedents that clearly spell out each of the parties' respective rights in the subject fishpond area. Moreover, it also explained its rationale for revoking or overturning its own decisions rendered on February 5 and July 23, 1974. Lastly, it is essentially a repeat of the 1972 decision as it confers the same rights and privileges to Hipolito. Thus, the most prudent thing to do is to retain the more exhaustive and factually updated version of the decision of the Office of the President, which is the November 11, 1991 Decision in O.P. Case No. 4732.

Assuming *arguendo* that the finality of O.P. Case No. 4732 will not trigger the application of the doctrine of *res judicata* to bar the petition now before us, the petitioners' cause must still fail because the petitioners hinge their claim on the alleged fraudulent transfer to Hipolito of their father Derla's right to the Fishpond Permit No. F-1080-F. It must be remembered that this has also been the subject of a separate complaint in Civil Case No. 5826, wherein the RTC ruled that aside from the action being filed beyond the prescriptive period, Derla was estopped from disputing the authenticity of the transfer as he used the very same document to defend himself in the criminal

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[67] G.R. No. 169604, March 6, 2007, 517 SCRA 561, 576.

case filed against him by Hipolito. In fact, the RTC acquitted him on the basis of that same document he had disputed and which his heirs are now disputing. The RTC's denial of Derla's petition to nullify the transfer of fishpond rights was affirmed by the Court of Appeals in CA-G.R. No. 47070-R and then by this Court in G.R. No. L-38230 in a Resolution dated February 22, 1974. The ruling in that case thus became final on March 27, 1974.[68]

The controversy over the subject fishpond area has long been debated in many actions and in various forums. The Court puts all the issues in this case to rest, with finality, in this Decision.

WHEREFORE, the instant petition is *DENIED*. The August 30, 2002 Decision and March 17, 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 63666 are *AFFIRMED*.

SO ORDERED.

Velasco, Jr. (Acting Chairperson), del Castillo, Abad,[*] and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 168922. April 13, 2011]

WILFREDO Y. ANTIQUINA, *petitioner, vs.* **MAGSAYSAY MARITIME CORPORATION and/or MASTERBULK, PTE., LTD.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME

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[68] *Rollo,* p. 255.

[*] Per Raffle dated April 11, 2011.

COURT UNDER RULE 45 ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION. — As a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45. However, this principle is subject to recognized exceptions. In the labor law setting, the Court will delve into factual issues when conflict of factual findings exists among the labor arbiter, the NLRC, and the Court of Appeals. Considering that in the present case there were differing factual findings on the part of the Court of Appeals, on one hand, and the Labor Arbiter and the NLRC, on the other, there is a need to make our own assiduous evaluation of the evidence on record.

2. ID.; CIVIL PROCEDURE; TECHNICAL RULES OF PROCEDURE SHALL BE LIBERALLY CONSTRUED IN FAVOR OF THE WORKING CLASS IN ACCORDANCE WITH THE DEMANDS OF SUBSTANTIAL JUSTICE. — There appears to be no justification for relaxing the rules of procedure in favor of the employer and not taking the same action in the case of the employee, particularly in light of the principle that technical rules of procedure shall be **liberally construed in favor of the working class** in accordance with the demands of substantial justice. We have also previously held that "[r]ules of procedure and evidence should not be applied in a very rigid and technical sense in labor cases in order that technicalities would not stand in the way of equitably and completely resolving the rights and obligations of the parties."

3. ID.; EVIDENCE; JUDICIAL NOTICE; FOREIGN LAWS ARE NOT A MATTER OF JUDICIAL NOTICE , LIKE ANY OTHER FACT, THEY MUST BE ALLEGED AND PROVEN. — Verily, the application and enforcement of foreign law is beyond this Court's authority, especially in the absence of proof of such foreign law. As we previously ruled in one case, "foreign laws do not prove themselves in our courts. Foreign laws are not a matter of judicial notice. Like any other fact, they must be alleged and proven. x x x."

4. ID.; ID.; BURDEN OF PROOF; IN LABOR CASES, THE QUANTUM OF PROOF NECESSARY IS SUBSTANTIAL EVIDENCE, OR SUCH AMOUNT OR RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION; APPLICATION IN CASE AT BAR. — In *National Union*

of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel Chapter v. National Labor Relations Commission, we held that "[t]he burden of proof rests upon the party who asserts the affirmative of an issue. And in labor cases, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." What is indubitable in this case is that petitioner alleged in his Position Paper that there was a CBA with AMOSUP (a **local** union of which he was purportedly a member) which entitled him to disability benefits in the amount of US$80,000.00. It is elementary that petitioner had the duty to prove by substantial evidence his own positive assertions. He did not discharge this burden of proof when he submitted photocopied portions of a different CBA with a different union. In all, we find that the Court of Appeals committed no error in ruling that the Labor Arbiter's award of US$80,000.00 in disability benefits was unsupported by the evidence on record, even if we take into consideration petitioner's late documentary submissions. There is no cogent reason to disturb the appellate court's finding that the only credible and competent bases for an award of disability benefits to petitioner are the POEA Standard Contract of Employment and petitioner's own medical evidence that his disability grade is Grade 11 (14.93%). Thus, the Court of Appeals' computation of petitioner's permanent medical unfitness benefits in the amount of US$7,465.00 must stand.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioner.
Carag Caballes Jamora & Somera Law Offices for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari*, assailing the Court of Appeals' Decision[1] dated May 31, 2005

[1] *Rollo*, pp. 152-163; penned by then Court of Appeals Associate Justice Jose Catral Mendoza (now a member of this Court) with Presiding Justice Romeo A. Brawner and Associate Justice Edgardo P. Cruz, concurring.

and Resolution[2] dated July 14, 2005 in CA-G.R. SP No. 82638. In the Decision dated May 31, 2005, the Court of Appeals modified the September 27, 2002[3] Decision of the Labor Arbiter in OFW Case No. 01-06-1216-00 awarding sickness allowance, permanent medical unfitness benefits and attorney's fees in favor of petitioner. The Court of Appeals denied petitioner's motion for reconsideration of the May 31, 2005 Decision in the assailed Resolution.

The material facts of the case, as culled from the records, follow:

Sometime in February 2000, petitioner Wilfredo Y. Antiquina was hired, through respondent manning agency Magsaysay Maritime Corporation (MMC), to serve as Third Engineer on the vessel, M/T Star Langanger, which was owned and operated by respondent Masterbulk Pte., Ltd. (Masterbulk). According to petitioner's contract of employment,[4] his engagement on the vessel was for a period of nine (9) months at a salary of US$936.00 per month. It is undisputed that petitioner's contract conformed to the standard Philippine Overseas Employment Agency (POEA) contract of employment.

Petitioner commenced his employment on the M/T Star Langanger on March 1, 2000. Almost seven months later, or on September 22, 2000, during a routine maintenance of the vessel's H.F.O Purifier #1, petitioner suffered a fracture on his lower left arm after a part fell down on him. After first aid treatment was given to petitioner, he was brought to a hospital in Constanza, Romania where the vessel happened to be at the time of the accident. At the Romanian hospital, petitioner was diagnosed with "fractura 1/3 proximala cubitus stg." as shown by the medical certificate[5] issued by the attending physician and his arm was put in a cast.

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[2] *Id.* at 187-188.

[3] *Id.* at 87-96.

[4] *Id.* at 29.

[5] CA *rollo,* pp. 41-42.

On October 1, 2000, petitioner was signed off the vessel at Port Said, Egypt and was repatriated to the Philippines, where he arrived on October 3, 2000. He immediately reported to the office of MMC on October 4, 2000 and was referred to Dr. Robert Lim of the Metropolitan Hospital. On October 5, 2000, petitioner was examined at the Metropolitan Hospital and Dr. Lim subsequently issued a medical report confirming that petitioner has an undisplaced fracture of the left ulna. Petitioner was given medication and advised to return after two weeks for repeat x-ray and re-evaluation.[6]

After one month, petitioner's cast was removed and he was advised to undergo physical therapy sessions. Despite several months of physical therapy, petitioner noticed that his arm still had not healed and he had difficulty straightening his arm. Another company designated doctor, Dr. Tiong Sam Lim, evaluated petitioner's condition and advised that petitioner undergo a bone grafting procedure whereby a piece of metal would be attached to the fractured bone. Upon learning from Dr. Tiong Sam Lim that the metal piece will only be removed from his arm after one and a half years, petitioner allegedly reacted with fear and decided not to have the operation.[7]

After formally informing respondents of his decision to forego the medical procedure recommended by the company physician, petitioner filed a complaint for permanent disability benefits, sickness allowance, damages and attorney's fees against herein respondents.

In his position paper[8] filed with the Labor Arbiter, petitioner asserted that he is entitled to sickness allowance equivalent to his basic wage for 120 days as stipulated under Section 20 of the POEA Standard Employment Contract. With respect to his claim for permanent disability benefits, he relied on the medical opinion of two doctors; namely, Dr. Rimando Saguin and Dr.

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[6] *Id.* at 43.

[7] *Rollo*, p. 13.

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

Antonio A. Pobre who both issued medical certificates,[9] finding to the effect that petitioner was no longer fit for sea service and recommending a partial permanent disability grade of 11 under the POEA Schedule of Disability Grading. However, petitioner claimed that, notwithstanding his own medical evidence regarding his disability grade, he was entitled to the purportedly superior benefits provided for under Section 20.1.5 of respondents' collective bargaining agreement (CBA) with the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP).[10] Section 20.1.5 allegedly provides:

> Permanent Medical Unfitness — A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, *i.e*. US$80,000.00 for officers and US$60,000.00 for ratings, AB and below. Furthermore, any seafarer assessed at less than 50% di[s]ability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation.[11]

Anent his prayer for damages and attorney's fees, petitioner asserted that respondents should be made liable in view of their negligence and delay in the payment of his allegedly valid claims and the latter's contravention of the terms and conditions of the contract of employment.[12]

In their defense, respondents contended that petitioner's monetary claims were premature by reason of the latter's refusal to undergo the operation recommended by the company designated physician. Respondents presented Dr. Tiong Sam Lim's typewritten opinion[13] dated June 4, 2001, stating that:

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[9] These were dated March 29, 2001 and September 20, 2001, respectively; *rollo*, pp. 49-51.

[10] *Rollo*, p. 57.

[11] *Id.* at 114.

[12] *Id.* at 58-59.

[13] CA *rollo*, p. 44.

IF BONE GRAFTING WAS DONE AND THE BONE HEALED, THEN HE WILL BE ABLE TO GO BACK TO SEA DUTIES. IF THE LEFT FOREARM IS LEFT AS IS, THEN, THERE WILL BE PAIN AND INABILITY TO TURN THE FOREARM CAUSING DISABILITY. THE DISABILITY THEN WILL BE GRADE 10.

Further citing Section 20(B)(2) of the POEA Standard Employment Contract, respondents claimed that, although it was their obligation to repatriate an injured or sick seaman and pay for his treatment and sick leave benefits until he is declared fit to work or his degree of disability has been clearly established by the company designated physician, it was allegedly petitioner's correlative obligation to submit himself for medical examination and treatment to determine if he is still fit to work or to establish the degree of his disability.[14] Respondents made known their willingness to shoulder the cost of the operation or procedure needed but it was allegedly petitioner who refused to undergo the operation in bad faith and in contravention of the terms of the employment contract.[15] Further, respondents argued that they were not liable for damages and attorney's fees for there was no bad faith or ill motive on their part.[16]

In a Decision dated September 27, 2002, the Labor Arbiter ruled in favor of petitioner and awarded him the amount of US$3,614.00 as sickness allowance; US$80,000.00 "representing [his] permanent medical unfitness benefits under the pertinent provisions of the Collective Bargaining Agreement";[17] and attorney's fees.

Respondents appealed the Labor Arbiter's decision to the National Labor Relations Commission (NLRC), contending, in addition to their previously proffered arguments, that they have already paid petitioner's sickness allowance[18] and that the Labor

[14] *Rollo*, pp. 66-67.

[15] *Id.*

[16] *Id* at 68-69.

[17] *Id.* at 95.

[18] CA *rollo*, p. 106; attaching to the memorandum of appeal documents to purportedly prove payment (CA *rollo*, pp. 116-127).

Arbiter had no basis to award disability compensation for failure of petitioner to present the CBA and proof of membership to AMOSUP.

The NLRC dismissed respondents' appeal in a Decision[19] dated August 20, 2003 and subsequently denied their motion for reconsideration.[20]

Undeterred, respondents filed a petition for *certiorari*[21] with the Court of Appeals. In a Decision dated May 31, 2005, the Court of Appeals noted that the NLRC appeared to have followed the rule that the conclusions of the Labor Arbiter when sufficiently corroborated by the evidence on record must be accorded respect by the appellate tribunals and thus, the NLRC no longer examined the evidence submitted by respondents to prove payment of petitioner's sickness allowance.[22] However, relying on our decision in *Philippine Telegraph and Telephone Corporation v. National Labor Relations Commission*,[23] the Court of Appeals held that:

> **Although said evidence were filed for the first time on appeal, it would have been prudent upon the NLRC to look into them** since it **was not bound by the rules of evidence** prevailing in courts of law or equity. In fact, labor officials are mandated by Article 221 of the Labor Code to use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. x x x.[24] (Emphasis supplied.)

As for the probative value of the receipts submitted by respondents as annexes to the memorandum of appeal, the Court of Appeals found that:

> **As clearly shown by said annexes, [respondents] had already paid [petitioner] his sickness allowance**. In fact, he received a

[19] *Rollo*, pp. 111-117.

[20] *Id.* at 133-135.

[21] *Id.* at 136-150.

[22] *Id.* at 157.

[23] 262 Phil. 491 (1990).

[24] *Rollo*, p. 158.

PCIB Check, dated November 28, 2000, in the amount of ₱41,467.98 on December 1, 2000; another PCIB Check, dated December 14, 2000, in the amount of ₱45,255.60 on January 10, 2001; an FEBTC check, dated January 25, 2001, in the amount of ₱48,053.68 on January 31, 2001; and lastly an RCBC check, dated February 14, 2001, in the amount of ₱43,691.06 on February 28, 2001. All of these documents bear [petitioner's] signature. Thus, he cannot deny that he received said sickness allowance in the total amount of ₱178,468.32.[25] (Emphasis supplied.)

With respect to respondents' claim that the Labor Arbiter's award of US$80,000 in medical unfitness benefits had no basis, the Court of Appeals held that:

A careful perusal of the records shows that [petitioner's] claim that he was a member of AMOSUP and, therefore, Article 20.1.5 of the CBA providing for an US$80,000.00 permanent medical unfitness benefits applies in this case, is **not supported by the evidence**. For one, **the said CBA does not form part of the evidence presented by [petitioner]** in this case. Instead, what he submitted as an attachment to his Memorandum of Authorities before this Court is a copy of a document entitled "Addendum to Memorandum of Agreement by and between Masterbulk PTE Ltd., Associated Marine Officers & Seamen's Union of the Phils. (AMOSUP), and Magsaysay Maritime Corporation." Said Addendum merely provides:

"1. That the Agreement shall be renewed/extended for another one (1) year effective January 1, 2000.

2. All other terms and conditions of the Agreement not in anyway inconsistent with the foregoing shall remain unaltered and in full force and effect."

Moreover, **he did not even present any identification card** that would show that he was really a member of the said labor organization. **Neither did he present any document that would show that seafarers** like him who ply the overseas route **were compulsory or automatic members** of said labor organization. **Since [petitioner] claims such membership, it was incumbent upon him to prove it.**

We, thus, hold that the NLRC committed a grave abuse of discretion when it affirmed the Labor Arbiter's decision awarding

[25] *Id.* at 158.

[petitioner] US$80,000.00 as medical unfitness benefit, despite the fact that such claim was unsubstantiated by any documentary evidence.[26] (Emphases supplied.)

However, as it was undisputed that petitioner suffered a work-related injury, the Court of Appeals still saw fit to award medical unfitness benefits, based on the POEA Standard Contract of Employment and the finding of petitioner's own physician that the proper disability grade for petitioner's injury was Grade 11 or 14.93%. Thus, the Court of Appeals computed petitioner's medical unfitness benefits, as follows:

> While it is true that [petitioner's] claim for disability is premature, the fact remains that there is still a work-connected injury and the attendant loss or impairment of his earning capacity that need to be compensated. On this score, Sec. 30-A of POEA Standard Contract of Employment is applicable. The same provides for a schedule of disability allowances and per said schedule, an impediment of Grade 11 is equivalent to the maximum rate of US$50,000.00. Multiply this amount by the degree of impediment, which is 14.93%, the [petitioner] is entitled to US$7,465.00, to be paid in Philippine Currency equivalent to the exchange rate prevailing during the time of payment.[27]

After finding that this case did not fall under the exceptional circumstances provided by law for an award of attorney's fees, the Court of Appeals ruled that the award of 10% attorney's fees in favor of petitioner was improper. Thus, the dispositive portion of the Court of Appeals' May 31, 2005 Decision read:

> WHEREFORE, the September 27, 2002 Decision of the Labor Arbiter is hereby modified to read as follows:
>
> "WHEREFORE, judgment is hereby rendered
>
> 1] ordering the respondents to pay the complainant the amount of US$7,480.00 or its equivalent amount in Philippine Currency at the prevailing exchange rate at the time of payment, representing permanent medical

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[26] *Id.* at 159-160.

[27] *Id.* at 161.

unfitness benefits, plus legal interest reckoned from the time it was due;

2] denying the claim for sickness allowance, the same having been paid;

3] denying the claim for attorney's fees; and

4] denying the other claims of the complainant."[28]

In his motion for reconsideration of the above Decision of the Court of Appeals, petitioner claimed that it was only by inadvertence that he previously failed to attach a copy of the CBA. Attached as annexes to his motion were: (a) a purported copy of the CBA (Masterbulk Vessels Maritime Officers Agreement 1999) which allegedly entitled him to US$110,000.00 in disability benefits (an amount even higher than the Labor Arbiter's award of US$80,000.00); and (b) a copy of his monthly contributions as union member during the period that he was employed by respondents. Thus, he prayed that the Court of Appeals reconsider its May 31, 2005 Decision and award him the higher amount of **US$110,000.00** in disability benefits in accordance with the Masterbulk Vessels Maritime Officers Agreement 1999.

In their Comment, respondents objected to the annexes of petitioner's motion for reconsideration on the grounds that his belated filing violated their right to due process and that the list of monthly contributions he presented did not prove he was a member of AMOSUP since the said list did not contain any validation/signature of an AMOSUP officer.

In his Reply, petitioner attached as additional evidence copies of: (a) his identification card as AMOSUP member; (b) his identification card as member of the Singapore Maritime Officers' Union; and (c) a certification dated July 13, 2005 issued by the Legal Department of AMOSUP that petitioner was a member of said union at the time of employment with the M/T Star Langanger from March 2 to October 1, 2000.[29]

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[28] *Id.* at 162.

[29] *Id.* at 183-185.

In a Resolution dated July 14, 2005, the Court of Appeals denied petitioner's motion for reconsideration, ruling that:

> As to the Masterbulk Vessels Maritime Agreement, it is too late in the day to consider it as it was just submitted with the Motion for Reconsideration. Liberality to get to the truth is most ideal but there is a point or stage of the process that it should no longer be allowed. To do so at this stage would be unfair to the other party.[30]

Hence, petitioner now comes to this Court, raising the following issues:

I.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN NOT ADMITTING AND CONSIDERING THE EVIDENCE SUBMITTED BY PETITIONER SHOWING THAT HE IS A MEMBER OF THE AMOSUP AND THE SINGAPORE MARITIME OFFICERS UNION.

II.

THE COURT OF APPEALS WAS CLEARLY BIASED IN FAVOR OF THE RESPONDENTS SUCH THAT IT SHOWED LIBERALITY TO THE LATTER BUT STRICTLY APPLIED THE RULES AGAINST PETITIONER.

At the outset, it should be noted that the resolution of the foregoing issues entails a review of the facts of the case which ordinarily would not be allowed in a petition for review on *certiorari* under Rule 45 of the Rules of Court. As a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45.

However, this principle is subject to recognized exceptions. In the labor law setting, the Court will delve into factual issues when conflict of factual findings exists among the labor arbiter, the NLRC, and the Court of Appeals.[31] Considering that in the present case there were differing factual findings on the part of

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[30] *Id.* at 187.

[31] *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, G.R. No. 177114, January 21, 2010, 610 SCRA 497, 506.

the Court of Appeals, on one hand, and the Labor Arbiter and the NLRC, on the other, there is a need to make our own assiduous evaluation of the evidence on record.

As the two issues raised by petitioner are intrinsically related, they will be discussed together.

The Court finds merit in petitioner's contention that it would be more in keeping with the interest of fairness and substantial justice for the Court of Appeals to likewise admit and review petitioner's evidence despite being submitted only on appeal. There appears to be no justification for relaxing the rules of procedure in favor of the employer and not taking the same action in the case of the employee, particularly in light of the principle that technical rules of procedure shall be **liberally construed in favor of the working class** in accordance with the demands of substantial justice.[32] We have also previously held that "[r]ules of procedure and evidence should not be applied in a very rigid and technical sense in labor cases in order that technicalities would not stand in the way of equitably and completely resolving the rights and obligations of the parties."[33]

In line with the objective of dispensing substantial justice, this Court has examined the evidence belatedly submitted by petitioner to the Court of Appeals. Unfortunately, even with this procedural concession in favor of petitioner, we do not find any sufficient basis to overturn the Court of Appeals' May 31, 2005 Decision on the merits.

To recall, it was petitioner's assertion in his Position Paper that he is entitled to US$80,000.00 as medical unfitness benefits under Article 20.1.5 of the CBA with AMOSUP, which provision he merely quoted in his pleading.[34] The Labor Arbiter awarded

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[32] *Plantation Bay Resort and Spa v. Dubrico,* G.R. No. 182216, December 4, 2009, 607 SCRA 726, 731-732; citing *PNOC Dockyard & Engineering Corp. v. National Labor Relations Commission*, 353 Phil. 431, 445 (1998).

[33] *Sevillana v. I.T. (International) Corp./Samir Maddah & Travellers Insurance and Surety Corporation*, 408 Phil. 570, 579 (2001).

[34] *Rollo,* pp. 57-58.

the amount of US$80,000.00 as permanent medical unfitness benefits, citing the said AMOSUP CBA as his basis for the award.[35] The Court of Appeals found that such award was not supported by any evidence, in view of petitioner's failure to present a copy of the AMOSUP CBA and proof of his membership in said union.

Although petitioner was able to submit to the Court of Appeals copies of his identification card as an AMOSUP member and a certification from AMOSUP's Legal Department that he was a member of said union during the period of his employment on the M/T Star Langanger,[36] he still failed to present any copy of respondents' supposed CBA with AMOSUP.

What petitioner belatedly presented on appeal appears to be a CBA between respondent Masterbulk and the Singapore Maritime Officers' Union**, not AMOSUP**. **Article 20.1.5**, or the stipulation regarding permanent medical fitness benefits quoted in petitioner's Position Paper and relied upon by the Labor Arbiter in his decision, **cannot be found in this CBA**. Instead, Clause 24 of the Masterbulk Vessels Maritime Officers' Agreement 1999 provides in part:

> 24. COMPENSATION FOR INJURY OR DEATH
>
> (1) The Company shall pay compensation to an officer for any injury or death arising from an accident while in the employment of the Company, and for this purpose shall effect a 24-hour insurance coverage in accordance with Appendix IV to this Agreement.
>
> (2) Compensation shall be paid as stipulated in sub-clause (1) of this clause for all injuries howsoever caused, regardless of whether or not an officer comes within the scope of the Workmen's Compensation Act and includes accidents arising or not arising out of the course of his employment and accidents arising outside the working hours of the injured or dead officer.

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

[36] As discussed previously, these were attached to petitioner's Reply filed with the Court of Appeals. (CA *rollo*, pp. 253 and 256.)

(3) An officer who is outside the scope of the Workmen's Compensation Act shall be entitled to claim for compensation equivalent to that payable under the Workmen's Compensation Act as if he is covered by the scope under the Workmen's Compensation Act.

(4) An officer who receives compensation under the Workmen's Compensation Act shall be entitled to receive only the difference between the amount paid to him under the Workmen's Compensation Act and the amount payable under Appendix IV, if the latter amount is higher than the compensation assessed by the Workmen's Compensation Department.

(5) An officer who suffers temporary incapacity shall be entitled to medical benefits including paid sick leave as stipulated in clause 23 of this Agreement.[37]

The higher amount of benefits (US$110,000.00) being claimed by petitioner does not appear in clause 24 but in Appendix IV referred therein, to wit:

APPENDIX IV
(Clauses 19 & 24)

COMPENSATION FOR INJURY OR DEATH

Maximum Compensation Payable:

	WORLD-WIDE EXCEPT WAR ZONE AREA	WAR RISK IN WAR ZONE OR WARLIKE AREA
1.1 Master, Chief Engineer and All ranks	US$110,000	US$220,000

Compensation shall be paid to an officer who sustains injuries through an accident as follows:

		PERCENTAGE OF CAPITAL SUM PAYABLE
x x x	x x x	x x x

[37] *Rollo*, p. 36.

2.2. PERMANENT DISABLEMENT resulting in:

x x x x x x x x x

2.2.8 Any other injury causing permanent disablement ……...100%

x x x x x x x x x

2.3 Permanent total loss of use of member shall be treated as loss of member.

2.4 Where the injury is not specified the Company shall adopt a percentage of disablement, which in its opinion is not inconsistent with the scales shown in sub-paragraph 2.2.

2.5 The aggregate of all percentages payable in respect of any one accident shall not exceed 100%.

x x x x x x x x x

4. **Injuries which are covered under the 1st and 2nd Schedule to the Singapore Workmen's Compensation Act (SWCA)**, but are not covered under this group personal accident policy (GPA) policy, shall be similarly covered by this GPA policy to the extent that computation of the percentage of compensation entailed in the SWCA shall be based on the maximum amount of compensation entailed in paragraph 1 of this Appendix. In the event of similar injury being entailed in the SWCA and this GPA policy, the more favourable compensation shall prevail.

5. The Company shall effect a 24-hour insurance to cover officers in its employment for any injury or death arising from an accident or war risk as shown in this Appendix.

6. The geographical limits of the insurance cover shall be worldwide.[38] (Emphasis supplied.)

From the foregoing, respondent Masterbulk ostensibly committed in this **CBA with a foreign union, Singapore Maritime Officers' Union,** that it shall pay compensation for injuries of employee-union members through the latter's coverage in a group personal accident insurance policy under terms set out in Appendix IV of the CBA. This contractual obligation is

[38] *Id.* at 42-44.

completely different from the cause of action set out in petitioner's Position Paper or the relief granted by the Labor Arbiter — **which was the purported obligation of respondents under an alleged CBA with a local union to pay a specific amount of permanent medical unfitness benefits.**

We now come to the question whether the Court may award medical unfitness benefits in accordance with the Masterbulk Vessels Maritime Officers Agreement 1999 as prayed for in the present petition. On this point, we rule that we cannot in view of the doubtful authenticity and enforceability of this CBA belatedly submitted by petitioner.

A perusal of the photocopies of the Masterbulk Vessels Maritime Officers Agreement 1999 submitted by petitioner to the Court and the Court of Appeals revealed that there were missing pages. The first page of the agreement began with a portion of clause 3. There was no signature page showing that the agreement was duly signed by the representatives of Masterbulk and the union. On some pages, there were page numbers and signatures/initials in the margins but on other pages there were no page numbers and signatures/initials. On the pages that did contain page numbers it was indicated that the document had 24 pages but the copies submitted by petitioner only had 17 pages.

Although petitioner was able to submit a photocopy of his identification card as a member of the Singapore Maritime Officers' Union, it appeared on the face of said identification card that his membership expired in September 2000 and it was unclear from the incomplete copy of the Masterbulk Vessels Maritime Officers Agreement 1999 if petitioner is entitled to make a claim under the said agreement beyond the term of his membership in the foreign union.

Even more importantly, clause 7 of the Masterbulk Vessels Maritime Officers Agreement 1999 provided that:

7. REFEREE

In the event of a dispute arising out of the operation of this Agreement, the matter shall be referred by either

> **party to the President of the Industrial Arbitration Court of Singapore** who may select a referee appointed **under Section 43 of the Industrial Relations Act** to hear and determine such dispute.[39] (Emphases supplied.)

It likewise does not escape our notice that under the pertinent provisions of the above-mentioned agreement the computation and payment of compensation for injuries depend on the applicable provisions of the Singapore Workmen's Compensation Act which petitioner did not prove in these proceedings. Verily, the application and enforcement of foreign law is beyond this Court's authority, especially in the absence of proof of such foreign law. As we previously ruled in one case, "foreign laws do not prove themselves in our courts. Foreign laws are not a matter of judicial notice. Like any other fact, they must be alleged and proven. x x x."[40]

In *National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel Chapter v. National Labor Relations Commission*,[41] we held that "[t]he burden of proof rests upon the party who asserts the affirmative of an issue. And in labor cases, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[42]

What is indubitable in this case is that petitioner alleged in his Position Paper that there was a CBA with AMOSUP (a **local** union of which he was purportedly a member) which entitled him to disability benefits in the amount of US$80,000.00. It is elementary that petitioner had the duty to prove by substantial evidence his own positive assertions. He did not discharge this burden of proof when he submitted photocopied portions of a different CBA with a different union.

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[39] *Id.* at 33.

[40] *Manufacturers Hanover Trust Co. and/or Chemical Bank v. Guerrero*, 445 Phil. 770, 777 (2003).

[41] G.R. No. 179402, September 30, 2008, 567 SCRA 291.

[42] *Id.* at 305.

In all, we find that the Court of Appeals committed no error in ruling that the Labor Arbiter's award of US$80,000.00 in disability benefits was unsupported by the evidence on record, even if we take into consideration petitioner's late documentary submissions. There is no cogent reason to disturb the appellate court's finding that the only credible and competent bases for an award of disability benefits to petitioner are the POEA Standard Contract of Employment and petitioner's own medical evidence that his disability grade is Grade 11 (14.93%). Thus, the Court of Appeals' computation of petitioner's permanent medical unfitness benefits in the amount of US$7,465.00[43] must stand.

WHEREFORE, the instant petition for review is *DENIED*. The Decision dated May 31, 2005 and the Resolution dated July 14, 2005 of the Court of Appeals in CA-G.R. SP No. 82638 are *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

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

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[43] In the body of the Court of Appeals' Decision dated May 31, 2005, the amount of permanent medical unfitness benefits was correctly computed as US$50,000.00 x 14.93% = US$7,465.00. However, the dispositive portion of said Decision erroneously stated that the permanent medical unfitness benefits to be awarded was US$7,480.00.

SECOND DIVISION

[G.R. No. 169292. April 13, 2011]

SPOUSES FRANCISCO DE GUZMAN, JR. and AMPARO O. DE GUZMAN, *petitioners, vs.* **CESAR OCHOA and SYLVIA A. OCHOA, represented by ARACELI S. AZORES, as their Attorney-in-Fact,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; ORDER DENYING A MOTION TO DISMISS; REMEDY OF THE AGGRIEVED PARTY, EXPLAINED. — An order denying a motion to dismiss is an interlocutory order which neither terminates the case nor finally disposes of it, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Therefore, an order denying a motion to dismiss may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in such cases is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment. Only in exceptional cases where the denial of the motion to dismiss is tainted with grave abuse of discretion that the Court allows the extraordinary remedy of *certiorari*. By "grave abuse of discretion," we mean such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.

2. ID.; ID.; OMNIBUS MOTION; A MOTION TO DISMISS, LIKE ANY OTHER OMNIBUS MOTION, MUST RAISE AND INCLUDE ALL OBJECTIONS AVAILABLE AT THE TIME OF ITS FILING; EXCEPTIONS; NOT PRESENT

IN CASE AT BAR. — Section 8, Rule 15 of the Rules of Court defines an omnibus motion as a motion attacking a pleading, judgment or proceeding. A motion to dismiss is an omnibus motion because it attacks a pleading, that is, the complaint. For this reason, a motion to dismiss, like any other omnibus motion, must raise and include all objections available at the time of the filing of the motion because under Section 8, "all objections not so included shall be deemed waived." As inferred from the provision, only the following defenses under Section 1, Rule 9, are excepted from its application: [a] lack of jurisdiction over the subject matter; [b] there is another action pending between the same parties for the same cause *(litis pendentia)*; [c] the action is barred by prior judgment *(res judicata)*; and [d] the action is barred by the statute of limitations or prescription. In the case at bench, the petitioners raised the ground of defective verification and certification of forum shopping only when they filed their second motion to dismiss, despite the fact that this ground was existent and available to them at the time of the filing of their first motion to dismiss. Absent any justifiable reason to explain this fatal omission, the ground of defective verification and certification of forum shopping was deemed waived and could no longer be questioned by the petitioners in their second motion to dismiss.

3. ID.; ID.; PLEADINGS; REQUIREMENT FOR VERIFICATION; NOT JURISDICTIONAL; EXPLAINED. — [T]he requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, and non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. In fact, the court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

4. ID.; ID.; ID.; REQUIREMENT FOR CERTIFICATION OF NON-FORUM SHOPPING; FAILURE TO COMPLY SHALL BE CAUSE FOR DISMISSAL OF THE CASE UPON MOTION AND AFTER HEARING. — [T]he rule

requiring the submission of such certification of non-forum shopping, although obligatory, is not jurisdictional. The certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different *fora*, as this practice is detrimental to an orderly judicial procedure. As to whether the trial court should have dismissed the complaint *motu proprio*, the Court rules in the negative. Section 5, Rule 7 of the Rules of Court is clear that failure to comply with the requirements on the Rule against forum shopping shall be cause for the dismissal of the case *"upon motion and after hearing."*

APPEARANCES OF COUNSEL

Argue Law Firm for petitioners.
Imelda A. Herrera for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* assailing the August 11, 2005 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 89329, filed by petitioners, Spouses Francisco De Guzman, Jr. and Amparo O. De Guzman *(petitioners)*. In the assailed decision, the CA found no commission of grave abuse of discretion when the public respondent therein, Judge Amelia A. Fabros *(Judge Fabros)*, Presiding Judge of the Regional Trial Court, Pasig City, Branch 160 *(RTC)*, denied petitioners' second motion to dismiss, in Civil Case No. 68896, an action for annulment of contract and damages.

The facts of the case have been succinctly summarized by the CA as follows:

On March 25, 2002, respondent spouses Cesar Ochoa and Sylvia Ochoa, through respondent Araceli Azores, ostensibly acting as

[1] Penned by Associate Justice Lucas P. Bersamin (now an Associate Justice of the Court), with Associate Justice Andres B. Reyes and Associate Justice Celia C. Librea-Leagogo, concurring; *rollo*, pp. 38-43.

attorney-in-fact, commenced in the Regional Trial Court (RTC) in Pasig City an action seeking the annulment of contract of mortgage, foreclosure sale, certificate of sale and damages. The action, docketed as Civil Case No. 68896 and entitled *Cesar Ochoa and Sylvia A. Ochoa, etc. v. Josefa M. Guevarra, et al.*, was raffled to Branch 160, presided by the respondent RTC Judge.

On May 22, 2002, the petitioners, as defendants in Civil Case No. 68896, filed a *motion to dismiss*, alleging the sole ground that the *complaint* did not state a cause of action. The petitioners' *motion to dismiss* was formally opposed by the private respondents.

On December 16, 2002, the respondent RTC Judge denied petitioners' *motion to dismiss* and at the same time set Civil Case No. 68896 for pre-trial conference, directing the parties to submit their respective pre-trial briefs.

On March 31, 2003, the petitioners filed a second *motion to dismiss*, alleging that the certification against forum shopping attached to the *complaint* was not executed by the principal parties (plaintiffs) in violation of Sec. 5, Rule 7, 1997 *Rules of Civil Procedure*, rendering the *complaint* fatally defective and thus dismissible.

The private respondents opposed the second *motion to dismiss*.

On February 12, 2004, the respondent RTC Judge issued her first assailed order, denying the second *motion to dismiss*, disposing thus:

x x x x x x x x x

> Inasmuch as the records show that the pending incident is the second motion to dismiss filed by the defendants, the same is hereby Denied for lack of merit.
>
> SO ORDERED.

On May 25, 2004, the petitioners filed their motion for reconsideration, but the respondent RTC Judge denied the motion through her second assailed order dated December 29, 2004, to wit:

> Acting on the Motion for Reconsideration (of the Order dated February 12, 2004, filed by the defendant Spouses Francisco and Amparo De Guzman, through counsel, on May 25, 2004, and after considering the grounds stated therein in support of their motion, and finding no cogent reason to warrant the reconsideration sought for, the motion is DENIED.

SO ORDERED.[2]

Aggrieved, petitioners elevated the order of denial to the CA via a petition for *certiorari* contending that the RTC should have dismissed the complaint *motu proprio* since it was fatally defective. They pointed out that the Verification and Certification of Non-Forum Shopping attached to the complaint was not signed by Cesar Ochoa or Sylvia Ochoa but by Araceli S. Azores *(Azores)*, who was acting as the attorney-in-fact of Cesar Ochoa only. They invited the attention of the RTC to the fact that the powers delegated to Azores did not include the authority to institute an action in court. Thus, according to the petitioners, the denial by the RTC of their motion to dismiss was capricious, whimsical and arbitrary, amounting to lack or excess of jurisdiction and should be struck down as null and void.

On August 11, 2005, the CA denied the petition for lack of merit. The CA, in its decision, agreed with the RTC that following the omnibus motion rule, the defects of the complaint pointed out by the petitioners were deemed waived when they failed to raise it in their first motion to dismiss.

Not in conformity, the petitioners filed this petition for review under Rule 45, anchored on this:

GROUND

THE COURT *A QUO* DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND JURISPRUDENCE WHEN IT REFUSED TO DISMISS THE COMPLAINT DESPITE THE FACT THAT IT WAS INDUBITABLY SHOWN AND ESTABLISHED THAT THE ESSENTIAL REQUIREMENT OF CERTIFICATION OF NON-FORUM SHOPPING PURSUANT TO SECTION 5, RULE 7 OF THE RULES OF COURT WAS NOT OBSERVED AND COMPLIED WITH SINCE THE SAME WAS NOT ACCOMPLISHED PERSONALLY BY THE PURPORTED PLAINTIFFS THEREIN.

It is the position of the petitioners that the second motion to dismiss does not violate the Omnibus Motion Rule under

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[2] *Id*. at 96-97.

Section 8, Rule 15 of the Rules of Court because the issue raised in the second motion was a question of jurisdiction. For said reason, the matter of the defective verification and certification cannot be considered to have been waived when it was not interposed at the first instance. Considering that the issue is jurisdictional, the RTC should have dismissed the complaint *motu proprio*.

The Court disagrees with the petitioners.

An order denying a motion to dismiss is an interlocutory order which neither terminates the case nor finally disposes of it, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[3]

Therefore, an order denying a motion to dismiss may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in such cases is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.[4]

Only in exceptional cases where the denial of the motion to dismiss is tainted with grave abuse of discretion that the Court allows the extraordinary remedy of *certiorari*. By "grave abuse of discretion," we mean such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law. [5]

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[3] *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, 507 Phil. 631, 645 (2005).

[4] *Negros Merchants Enterprises, Inc. v. China Banking Corporation*, G.R. No. 150918, August 17, 2007, 530 SCRA 478, 485.

[5] *Supra* note 3.

In this case, the petitioners failed to convincingly substantiate its charge of arbitrariness on the part of Judge Fabros. Absent such showing of arbitrariness, capriciousness, or ill motive, the Court cannot but sustain the ruling of the CA.

Section 8, Rule 15 of the Rules of Court defines an omnibus motion as a motion attacking a pleading, judgment or proceeding. A motion to dismiss is an omnibus motion because it attacks a pleading, that is, the complaint. For this reason, a motion to dismiss, like any other omnibus motion, must raise and include all objections available at the time of the filing of the motion because under Section 8, "all objections not so included shall be deemed waived." As inferred from the provision, only the following defenses under Section 1, Rule 9, are excepted from its application: [a] lack of jurisdiction over the subject matter; [b] there is another action pending between the same parties for the same cause *(litis pendentia)*; [c] the action is barred by prior judgment *(res judicata)*; and [d] the action is barred by the statute of limitations or prescription.

In the case at bench, the petitioners raised the ground of defective verification and certification of forum shopping only when they filed their second motion to dismiss, despite the fact that this ground was existent and available to them at the time of the filing of their first motion to dismiss. Absent any justifiable reason to explain this fatal omission, the ground of defective verification and certification of forum shopping was deemed waived and could no longer be questioned by the petitioners in their second motion to dismiss.

Moreover, contrary to petitioners' assertion, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, and non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. In fact, the court may order the correction of the pleading if verification is lacking or act on the pleading although it is

not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.[6]

Similarly, the rule requiring the submission of such certification of non-forum shopping, although obligatory, is not jurisdictional.[7] The certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different *fora*, as this practice is detrimental to an orderly judicial procedure.[8]

As to whether the trial court should have dismissed the complaint *motu proprio*, the Court rules in the negative. Section 5, Rule 7 of the Rules of Court is clear that failure to comply with the requirements on the rule against forum shopping shall be cause for the dismissal of the case "*upon motion and after hearing*."

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[6] *Mediserve, Inc. v. Court of Appeals (Special Former 13th Division) and Landheights Development Corporation*, 404 Phil. 981, 994-995 (2001), citing *Shipside, Incorporated v. Court of Appeals.*

[7] *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336-337.

[8] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004, 433 SCRA 455, 463.

FIRST DIVISION

[G.R. No. 170914. April 13, 2011]

STEFAN TITO MIÑOZA, *petitioner, vs.* **HON. CESAR TOMAS LOPEZ, in his official capacity as Mayor and Chair, Loon Cockpit Arena Bidding and Awards Committee, its Members namely: HERMINIGILDO M. CALIFORNIA, NOEL CASTROJO, JESSE SEVILLA, FORTUNATO GARAY, PERFECTO MANTE, ROGELIO GANADOS, P/INSP. JASEN MAGARAN, SANGGUNIANG BAYAN OF LOON, BOHOL, represented by its Presiding Officer, Vice Mayor RAUL BARBARONA, and MARCELO EPE,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; REAL PARTY-IN-INTEREST; DEFINED AND CONSTRUED; APPLICATION IN CASE AT BAR. — It is a general rule that every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest." "To qualify a person to be a real party-in-interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced." Under this definition, petitioner, not being one of the bidders clearly has no personality to contest the alleged rigged bidding as well as to pray for the annulment of Ordinance No. 03-007, Series of 2003 which granted the franchise to Marcelo. The fact that he owns the cockpit in Bgy. Lintuan does not clothe him with legal standing to have the bidding proceedings annulled and Marcelo stripped off of the cockpit franchise. Even assuming that the bidding proceeding was rigged thereby disqualifying Marcelo as a bidder, the highest bidder would still be Jose,

and not the petitioner who was not even a participant. Contrary to petitioner's claim that Jose was his representative, records show that Jose acted in his personal capacity when he applied to be one of the bidders of the cockpit franchise. Never was it shown that he was bidding on behalf of someone else, particularly petitioner. Petitioner's agreement with his family and Jose, *i.e.*, that the latter would bid on behalf of the petitioner, does not bind the respondents. Thus, had Jose been the highest bidder, the franchise would have been awarded in his name and not in favor of petitioner. Jose would be the one accountable to the *Sangguniang Bayan* with regard to fulfillment of the obligations of said franchise.

APPEARANCES OF COUNSEL

Trabajo-Lim Law Office for petitioner.
Lord R. Marapao IV for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

There can be no legal duel in court when the one who demands satisfaction from the alleged offender is not even the offended party.

When petitioner's suit for annulment of bidding of a cockpit franchise and for damages was dismissed by the lower courts on the ground that he is not the real party in interest, he now comes before this Court to assert his legal personality to sue.

This Petition for Review on *Certiorari* assails the July 29, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 83894 which dismissed the Petition for *Certiorari* filed before it. Likewise assailed is the December 2, 2005 Resolution[2] denying the Motion for Reconsideration thereof.

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[1] CA *rollo*, pp. 182-192; penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.

[2] *Id.* at 207-208.

Factual Antecedents

For several years since 1988, petitioner Stefan Tito Miñoza was the duly licensed owner and operator[3] of the Loon Cockpit Arena in Cogon Norte, Loon, Bohol. Because of the dilapidation of the building, the increasing rentals and the lot owner's notice for him to vacate by October 2001, petitioner transferred his business operation to Bgy. Lintuan in Loon. In March 2001, petitioner began the construction of a new cockpit after securing from the municipal officials a building permit, an electrical permit[4] and a fencing permit.[5] By the end of 2001, the cockpit was certified by the municipal engineer as 65% complete.[6] On January 11, 2002, respondent Municipal Mayor Cesar Tomas Lopez (Mayor Lopez) issued in favor of petitioner a temporary permit to hold cockfights at the newly-built cockfighting arena in Bgy. Lintuan beginning January 13, 2002.[7]

Six days later, however, the *Sangguniang Bayan* issued Resolution No. 02-016, Series of 2002[8] declaring the cockpit in Bgy. Lintuan as unlicensed and that the only licensed cockpit is the one in Cogon Norte. The resolution likewise stated that the cockpit in Bgy. Lintuan has no benches, toilets, or eateries and that the place is prone to vehicular accidents for lack of parking space. As a result, Mayor Lopez revoked petitioner's temporary license to operate.

Subsequently, Municipal Ordinance No. 03-001 Series of 2003 or the "Cockfighting Ordinance of Loon"[9] was approved to regulate cockfighting in the municipality. Pursuant thereto,

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[3] *Id.* at 60-66 which showed the latest payments in connection with petitioner's business license/permit for the year 2001.

[4] *Id.* at 68, 72-73.

[5] *Id.* at 69-71.

[6] *Id.* at 77.

[7] *Id.* at 74.

[8] *Id.* at 75-76.

[9] *Id.* at 35-43.

the *Sangguniang Bayan* enacted Resolution No. 03-161, Series of 2003[10] which opened for public bidding a 25-year franchise of the cockpit operation in Loon. The Loon Cockpit and Awards Bidding Committee scheduled for August 25, 2003 the prequalification conference and actual bidding of the franchise of the Loon Cockpit.[11]

Four qualified parties submitted their cash bids namely, Ricardo Togonon, Ricky Masamayor, Marcelo Epe (Marcelo), and petitioner's uncle, Jose Uy (Jose).[12] According to petitioner, he did not personally join the bidding since he knew that Mayor Lopez will only thwart his bid because of the case he filed against him before the Ombudsman in line with the cancellation of the temporary permit earlier issued to him. Hence, it was petitioner's uncle who submitted the bid for and on his behalf.

During the conduct of the public bidding, Marcelo was declared the winner[13] and a franchise for the cockpit operation in Loon was granted in his favor by way of Municipal Ordinance No. 03-007, Series of 2003.[14]

On January 29, 2004, petitioner filed a Complaint[15] with the Regional Trial Court (RTC) of Bohol in Tagbilaran City against Mayor Lopez, the members of the *Sangguniang Bayan*, the members of the Loon Cockpit Bidding and Awards Committee, and the franchise awardee, Marcelo, for Annulment of both the bidding process and Municipal Ordinance No. 03-007, Series of 2003 and for Damages. Petitioner alleged that the bidding was rigged and fraudulently manipulated to benefit Marcelo, Mayor Lopez's rumored business partner and financial backer.

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

[11] *Id.* at 47.

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

[13] *Id.* at 52.

[14] *Id.* at 57-59.

[15] *Id.* at 21-33; Raffled to Branch 3 under Presiding Judge Venancio J. Amila and docketed as Civil Case No. 6903.

Considering the rigged bidding, petitioner claimed that the ordinance awarding the franchise to Marcelo has no basis.

Anent his claim for damages, petitioner alleged that respondents acted in bad faith in granting him the necessary permits to construct a cockpit in Bgy. Lintuan only to revoke them when his new cockpit was about to be finished and after he had already spent approximately a million pesos for construction. Because of these unjust, illegal and malicious acts of respondents, petitioner claimed that he suffered great anxiety and extreme prejudice which entitles him to moral damages of ₱200,000.00, exemplary damages of ₱150,000.00 and actual damages equivalent to the amount spent for the construction of his new cockpit or ₱1,000,000.00.

Respondents did not file their Answer except for Marcelo who filed an Answer-in-Intervention[16] averring that the suit was meant to harass and to block the grand cock derby that he was about to stage. He maintained that no irregularity occurred in the bidding as the officials judiciously performed their duties.

Marcelo subsequently moved to dismiss petitioner's complaint mainly for lack of cause of action and for *estoppel*,[17] arguing that petitioner was not even one of the bidders and that he never filed any protest during the bidding.

Ruling of the Regional Trial Court

On March 9, 2004, the RTC dismissed the complaint on the ground that petitioner was not the proper party to sue since he was not even a bidding participant in the alleged rigged bidding of the cockpit franchise. The trial court also found petitioner undeserving of damages. The RTC ratiocinated in this wise:

> In the case of the cockpit arena of plaintiff in Lintuan, it is to be noted that the Sangguniang Bayan, under Municipal Ordinance No. 02-016, S-2002, had earlier declared it unfit and sub-standard being lacking of [sic] facilities and prone to vehicular accident which

[16] *Id.* at 78-85.

[17] *Id.* at 88-95; See Petitioner's Verified Motion to Dismiss.

considerations the Court finds not only [untenable] but of paramount importance as it is the bounden duty of any local government or any business proprietor for that matter to ensure the safety of the life and limbs of the users to maintain public patronage. And having awarded the franchise to defendant Marcelo Epe, plaintiff has no business to question the judgment of the *Sangguniang Bayan* on the matter as it did not impair any contract or right granted to third persons much less the plaintiff as the permit granted to him by the Mayor was only temporary that did not confer a vested right for the issuance of a franchise. But even granting *arguendo* that the bidding was rigged, the incident should have been questioned right then and there or reasonably after the submission of the Bidding Report to the *Sangguniang Bayan*, yet, the records shows the contrary. In fact, it took plaintiff five months later to do it and surprisingly in time for the opening activity of the Grand Derby which would only suggest that plaintiff [sic] intention was malicious and in bad faith and was only out to put defendant in public shame and embarrassment had his application for temporary restraining order succeeded. Besides, plaintiff did not personally participate in the bidding, so that, it is correct to say that he is not a party-in-interest thereto and, thus, estopped to bring the action himself in court. Furthermore, he was afforded all legal remedies therefor, having taken his cause to the Ombudsman but the same was dismissed for being bereft of propriety. If ever he suffered damages in the construction of his new cockpit in Lintuan, it was his fault for not [sic] cautious enough to invest in the enterprise without first obtaining a franchise.

Wherefore, in view of all the foregoings, the instant case is hereby ordered DISMISSED with costs against plaintiff.[18]

Petitioner filed a Motion for Reconsideration[19] insisting that he is a party-in-interest because as a licensed cockpit operator for several years, he stands to be benefited or injured by the court's judgment. The RTC nevertheless dismissed petitioner's motion for reconsideration in its March 17, 2004 Order.[20]

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[18] *Id.* at 18-19.

[19] *Id.* at 100-103.

[20] *Id.* at 159.

Ruling of the Court of Appeals

Petitioner thus filed a Petition for *Certiorari*[21] before the CA docketed as CA-G.R. SP No. 83894. He argued that 'not being a party-in-interest' is not one of the enumerated grounds for dismissing a case under the Rules of Court. And granting that it is a ground, he claimed that he was denied due process when the RTC dismissed his action without allowing him to present evidence to prove that he is a party-in-interest. Petitioner asserted that while he did not personally participate in the bidding, it was Jose, his uncle, who submitted the bid on his behalf. He also asserted that Marcelo's claims in his motion to dismiss were matters of defense and questions of fact that necessitated a trial on the merits which was never conducted.

In its assailed July 29, 2005 Decision,[22] the CA stressed that due process does not necessarily entail a full-blown trial, and in petitioner's case, he was clearly given all the opportunities to be heard. Moreover, the CA found no grave abuse of discretion on the part of the RTC in dismissing petitioner's suit for lack of cause of action for want of personality to sue. The CA explained, *viz*:

> As shown in the records of the case, it was the petitioner's uncle and not the petitioner himself who participated in the bid. The fact that the petitioner is the owner of the new and existing cockpit and a licensed cockpit operator for the past fourteen (14) years is irrelevant.
>
> To emphasize, the present complaint indeed has no cause of action. Settled is the doctrine that a valid ground must appear on the face of the complaint. The test of the sufficiency of the facts alleged in a complaint as constituting a cause of action is whether or not, admitting the facts alleged, the court might render a valid judgment upon the same in accordance with the prayer of the complaint. From the face of the complaint, it is manifest that the petitioner is not the real party in interest for he was not even a participant in the August 25, 2003 bidding. Therefore, the petitioner, having

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[21] *Id.* at 2-15.

[22] *Id.* at 182-192.

no personality to sue has no cause of action against the defendants. x x x[23]

Hence, the CA disposed of the petition as follows:

WHEREFORE, premises considered, this petition is denied due course and accordingly dismissed. The Order dated March 9, 2004 of the Regional Trial Court, 7th Judicial Region, Branch 3, City of Tagbilaran, in Civil Case No. 6903 is hereby AFFIRMED.

SO ORDERED.[24]

Petitioner filed a Motion for Reconsideration[25] but it was denied in a Resolution[26] dated December 2, 2005.

Hence, this petition.

The Parties' Arguments

Petitioner argues that he is a party because he stands to be prejudiced by the rigged bidding and the assailed ordinance as he was in fact the highest bidder of the cockfight franchise, it having been agreed by their family that his uncle, Jose, would only submit the bid on petitioner's behalf. Petitioner claims that his bid was the highest if Marcelo's questionable bid was excluded.

On respondents' part, they maintain that petitioner has no cause of action against them.[27]

Issue

The sole issue to be resolved is whether petitioner has the standing to challenge the bidding proceedings and the issuance of Ordinance No. 03-007, Series of 2003.

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[23] *Id.* at 190-191.

[24] *Id.* at 92.

[25] *Id.* at 197-202.

[26] *Id.* at 207-208.

[27] *Rollo*, pp. 161-165, 172-174.

Our Ruling

It is a general rule that every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[28]

Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest."[29] "To qualify a person to be a real party-in-interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced."[30]

Under this definition, petitioner, not being one of the bidders clearly has no personality to contest the alleged rigged bidding as well as to pray for the annulment of Ordinance No. 03-007, Series of 2003 which granted the franchise to Marcelo. The fact that he owns the cockpit in Bgy. Lintuan does not clothe him with legal standing to have the bidding proceedings annulled and Marcelo stripped off of the cockpit franchise. Even assuming that the bidding proceeding was rigged thereby disqualifying Marcelo as a bidder, the highest bidder would still be Jose, and not the petitioner who was not even a participant. Contrary to petitioner's claim that Jose was his representative, records show that Jose acted in his personal capacity when he applied to be one of the bidders of the cockpit franchise.[31] Never was it shown

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[28] Rules of Court, Rule 3, Section 2.

[29] *Ortigas Co. Ltd. v. Court of Appeals*, 400 Phil. 615, 625 (2000) citing *Republic v. Sandiganbayan*, G.R. No. 90667, November 5, 1991, 203 SCRA 310; *De Leon v. Court of Appeals*, G.R. No. 123290, August 15, 1997, 277 SCRA 478; and *Barfel Development Corporation. v. Court of Appeals*, G.R. No. 98177, June 8, 1993, 223 SCRA 268.

[30] *Shipside, Inc. v. Court of Appeals*, 404 Phil. 981, 998 (2000).

[31] CA *rollo*, p. 54.

that he was bidding on behalf of someone else, particularly petitioner. Petitioner's agreement with his family and Jose, *i.e.*, that the latter would bid on behalf of the petitioner, does not bind the respondents. Thus, had Jose been the highest bidder, the franchise would have been awarded in his name and not in favor of petitioner. Jose would be the one accountable to the *Sangguniang Bayan* with regard to fulfillment of the obligations of said franchise.

All told, this Court finds no reason to disturb the judgment of the CA affirming the RTC's dismissal of petitioner's action. Suffice it to state that on the sole basis of the allegations of the complaint, the court may dismiss the case for lack of cause of action.

WHEREFORE, the Petition is hereby *DENIED.* The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 83894 dated July 29, 2005 and December 2, 2005, respectively, are *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181440. April 13, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AIDA MARQUEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING OF MINORS; FAILURE TO RETURN A MINOR; ELEMENTS; PRESENT IN CASE

AT BAR. — A reading of the charge in the information shows that the act imputed to Marquez was not the illegal detention of a person, but involves her deliberate failure to restore a minor baby girl to her parent after being entrusted with said baby's custody. Contrary to Marquez's assertions, therefore, she was charged with violation of Article 270, and not Article 267, of the Revised Penal Code. The Revised Penal Code considers it a crime when a person who has been entrusted with the custody of a minor later on deliberately fails to return said minor to his parent or guardian. This may be found in Article 270. x x x This crime has two essential elements: 1. The offender is entrusted with the custody of a minor person; and 2. The offender deliberately fails to restore the said minor to his parents or guardians. This Court, in elucidating on the elements of Article 270, stated that while one of the essential elements of this crime is that the offender was entrusted with the custody of the minor, what is actually being punished is *not* the kidnapping but the **deliberate** failure of that person to restore the minor to his parents or guardians. As the penalty for such an offense is so severe, the Court further explained what "deliberate" as used in Article 270 means: Indeed, the word deliberate as used in Article 270 of the Revised Penal Code must imply something more than mere negligence — **it must be premeditated, headstrong, foolishly daring or intentionally and maliciously wrong**. It is clear from the records of the case that Marquez was entrusted with the custody of Justine. Whether this is due to Merano's version of Marquez borrowing Justine for the day, or due to Marquez's version that Merano left Justine at her house, it is undeniable that in both versions, Marquez agreed to the arrangement, *i.e.*, to temporarily take custody of Justine. It does not matter, for the first element to be present, how long said custody lasted as it cannot be denied that Marquez was the one entrusted with the custody of the minor Justine. Thus, the first element of the crime is satisfied. As to the second element, neither party disputes that on September 6, 1998, the custody of Justine was transferred or entrusted to Marquez. Whether this lasted for months or only for a couple of days, the fact remains that Marquez had, at one point in time, physical and actual custody of Justine. Marquez's deliberate failure to return Justine, a minor at that time, when demanded to do so by the latter's

mother, shows that the second element is likewise undoubtedly present in this case.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURTS ASSESSMENT OF THE CREDIBILITY OF WITNESSES IS ENTITLED TO THE HIGHEST RESPECT; *RATIONALE*. — This Court is constrained to once again reiterate the time-honored maxim that the trial court's assessment of the credibility of witnesses is entitled to the highest respect. In *People v. Bondoc*, a case also involving the accused's failure to return a minor, we explained the rationale of this maxim: We find no cogent reason to disturb the findings of the trial court. **The issue involved in this appeal is one of credibility, and this Court has invariably ruled that the matter of assigning values to the testimony of witnesses is best performed by the trial courts** because they, unlike appellate courts, can weigh the testimony of witnesses in the light of the demeanor, conduct and attitude of the witnesses at the trial, except when circumstances of weight or influence were ignored or disregarded by them which does not obtain in the present case. **Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight that would have affected the result of the case, this Court will not disturb factual findings of the lower court.** Having had the opportunity of observing the demeanor and behavior of witnesses while testifying, the trial court more than this Court is in a better position to gauge their credibility and properly appreciate the relative weight of the often conflicting evidence for both parties. **When the issue is one of credibility, the trial court's findings are given great weight on appeal.**

3. ID.; ID.; DENIAL; THE DEFENSE OF DENIAL IS A SELF-SERVING NEGATIVE EVIDENCE, WHICH CANNOT BE GIVEN GREATER WEIGHT THAN THAT OF THE DECLARATION OF A CREDIBLE WITNESS WHO TESTIFIES ON AFFIRMATIVE MATTERS. — The manner of appreciating the defense of denial was discussed by this Court in this wise: As to the defense of denial, the same is inherently weak. Denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters. Like alibi, denial is an inherently weak defense, which cannot prevail

over the positive and credible testimonies of the prosecution witnesses. Denial cannot prevail over the positive testimonies of prosecution witnesses who were not shown to have any ill motive to testify against petitioner. Merano's credibility has been established by the trial court, to which the Court of Appeals agreed. This Court finds no reason to depart from these findings, especially since it was the trial court which had the opportunity to evaluate and assess the credibility of the witnesses presented before it. Both courts found Merano's testimony to be straightforward and consistent. Thus, Marquez's denial and inconsistent statements cannot prevail over Merano's positive and credible testimony.

4. CRIMINAL LAW; KIDNAPPING; CIVIL LIABILITY; MORAL DAMAGES, AWARD OF; WHEN JUSTIFIED. — In *People v. Bernardo*, we held that the crime of kidnapping and failure to return a minor under Article 270 of the Revised Penal Code is clearly analogous to illegal and arbitrary detention or arrest, thereby justifying the award of moral damages.

5. ID.; DAMAGES; NOMINAL DAMAGES; WHEN AWARD THEREOF IS PROPER. — The award of nominal damages is also allowed under Article 2221 of the New Civil Code. x x x It took Merano almost a year to legally recover her baby. Justine was only three months old when this whole debacle began. She was already nine months old when Merano saw her again. She spent her first birthday at the Reception and Study Center for Children of the Department of Social Welfare and Development. Evidently, Merano's right as a parent which was violated and invaded must be vindicated and recognized, thereby justifying the award of nominal damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review is the August 29, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00467, which affirmed with modification the Regional Trial Court's (RTC) January 21, 2004 Decision[2] in Criminal Case No. 99-106, wherein accused-appellant Aida Marquez (Marquez), also known as Aida Pulido, was found guilty beyond reasonable doubt of the crime of Kidnapping and Failure to Return a Minor as defined and penalized under Article 270 of the Revised Penal Code, as amended by Republic Act No. 18;[3] was sentenced to serve the penalty of *reclusion perpetua*; and was ordered to pay the offended party Fifty Thousand Pesos (₱50,000.00) as moral damages and Twenty Thousand Pesos (₱20,000.00) as exemplary damages.

On December 28, 1998, Marquez was charged with Kidnapping under Article 270 of the Revised Penal Code as amended by Republic Act No. 18, before the RTC, Branch 140 of Makati City.[4] The Information reads in part as follows:

That on or about the 6th day of September, 1998, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being entrusted with the custody of a minor, JUSTINE BERNADETTE C. MERANO, a three (3) month old baby girl, did then and there willfully, unlawfully and

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[1] *Rollo*, pp. 4-18; penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. (now Associate Justice of the Supreme Court) and Sesinado E. Villon, concurring.

[2] CA *rollo*, pp. 15-27; penned by Judge Leticia P. Morales.

[3] An Act to Amend Articles Sixty-Two, Two Hundred and Sixty-Seven, Two Hundred and Sixty-Eight, Two Hundred and Seventy, Two Hundred and Seventy-One, Two Hundred and Ninety-Four, and Two Hundred and Ninety-Nine of the Revised Penal Code. Approved on September 25, 1946.

[4] This case was originally raffled to Branch 62. Upon the parties' joint manifestation that the alleged kidnapped victim was a minor, the court ordered the transfer and reraffle of the case to the appropriate Family Court. Records, p. 26.

feloniously deliberately fail to restore the latter to her parent, CAROLINA CUNANAN *y* MERANO (*sic*).[5]

Marquez pleaded not guilty to the crime charged in her arraignment on October 10, 2002.[6] Trial on the merits followed the termination of the pre-trial conference.

According to the complainant, Carolina Cunanan Merano (Merano), she met Marquez at the beauty parlor where she was working as a beautician. Merano confessed to easily trusting Marquez because aside from her observation that Marquez was close to her employers, Marquez was also nice to her and her co-employees, and was always giving them food and tip.[7]

On September 6, 1998, after a trip to a beach in Laguna, Marquez allegedly borrowed Merano's then three-month old daughter Justine Bernadette C. Merano (Justine) to buy her some clothes, milk and food. Merano said she agreed because it was not unusual for Marquez to bring Justine some things whenever she came to the parlor. When Marquez failed to return Justine in the afternoon as promised, Merano went to her employers' house to ask them for Marquez's address. However, Merano said that her employers just assured her that Justine will be returned to her soon.[8]

Merano averred that she searched for her daughter but her efforts were unsuccessful until she received a call from Marquez on November 11, 1998. During that call, Marquez allegedly told Merano that she will return Justine to Merano the following day and that she was not able to do so because her own son was sick and was confined at the hospital. Marquez also allegedly asked Merano for Fifty Thousand Pesos (₱50,000.00) for the expenses that she incurred while Justine was with her.[9] When the supposed return of Justine did not happen, Merano claimed

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[5] Records, p. 1; the name should read Carolina Merano *y* Cunanan.

[6] *Id.* at 64.

[7] TSN, November 28, 2002, pp. 7-10.

[8] *Id.* at 10-12.

[9] *Id.* at 22.

that she went to Marquez's house, using the sketch that she got from her employers' driver, but Marquez was not home. Upon talking to Marquez's maid, Merano learned that Justine was there for only a couple of days. Merano left a note for Marquez telling her that she will file a case against Marquez if Justine is not returned to her.[10]

Merano afterwards went to see then Mayor Alfredo Lim to ask for his help. Merano said that Mayor Lim referred her to Inspector Eleazar of San Pedro, Laguna, who assigned two police officers to accompany her to Marquez's house. When Merano did not find Justine in Marquez's house, she went back to Inspector Eleazar who told her to come back the following day to confront Marquez whom he will call. Merano came back the next day as instructed but Marquez did not show up.[11]

On November 17, 1998, Merano gave her sworn statement to the police and filed a complaint against Marquez. On February 11, 1999, Marquez allegedly called Merano up again to tell her to pick up her daughter at Modesto Castillo's (Castillo) house in Tiaong, Quezon. The following day, Merano, accompanied by Senior Police Officer (SPO) 2 Diosdado Fernandez and SPO4 Rapal, went to the house of Castillo in Quezon. Merano claimed that Castillo told her that Marquez sold Justine to him and his wife and that they gave Marquez Sixty Thousand Pesos (₱60,000.00) supposedly for Merano who was asking for money. Castillo even gave Merano a photocopy of the handwritten "*Kasunduan*" dated May 17, 1998, wherein Merano purportedly gave Justine to the Castillo spouses.[12] The Castillos asked Merano not to take Justine as they had grown to love her but Merano refused. However, she was still not able to take Justine home with her because the police advised her to go through the proper process as the Castillos might fight for their right to retain custody of Justine.[13] Merano then learned from Castillo that in an effort

[10] *Id.* at 12-16.

[11] *Id.* at 17-19.

[12] Records, p. 121.

[13] TSN, November 28, 2002, pp. 19-32.

to legalize the adoption of Justine, the Castillos turned over custody of Justine to the Reception and Study Center for Children of the Department of Social Welfare and Development.[14]

To defend herself, Marquez proffered her own version of what had happened during her testimony.[15] Marquez said that she had only formally met Merano on September 6, 1998 although she had known of her for some time already because Merano worked as a beautician at the beauty parlor of Marquez's financier in her real estate business. Marquez alleged that on that day, Merano offered Justine to her for adoption. Marquez told Merano that she was not interested but she could refer her to her friend Modesto Castillo (Castillo). That very same night, while Marquez was taking care of her son who was then confined at the Makati Medical Center, Merano allegedly proceeded to Marquez's house in Laguna and left Justine with Marquez's maid. The following day, while Marquez was at the hospital again, Castillo, accompanied by his mother, went to Marquez's house to pick up Justine. Since Marquez was out, she instructed her maid not to give Justine to Castillo for fear of possible problems. However, she still found Justine gone upon her return home that evening. Marquez allegedly learned of the encounter between the Castillos and Merano when a San Pedro police officer called Marquez to tell her that Merano, accompanied by two police officers, went to Castillo's house to get Justine. This was confirmed by Castillo who also called Marquez and told her that Merano offered Justine to him for adoption.[16]

SPO2 Fernandez, one of the police officers who accompanied Merano to Castillo's house in February 1999, was presented by the defense to prove that he was a witness to the execution of a document wherein Merano gave up her right to Justine to the Castillo spouses. Fernandez said that on February 12, 1999, he and SPO4 Rapal accompanied Merano to the house of Castillo

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[14] TSN, November 28, 2002, p. 35.

[15] TSN, February 20, 2003 and March 7, 2003.

[16] TSN, February 20, 2003, pp. 3-14.

where Justine was allegedly being kept. When they arrived at Castillo's house, where they found baby Justine, Merano and Castillo talked and after sometime, they arrived at an agreement regarding Justine's adoption. SPO2 Fernandez averred that he, Castillo, Merano and SPO4 Rapal left Castillo's house to go to a lawyer near Castillo's house. After the agreement was put into writing, they all signed the document, entitled "*Kasunduan sa Pagtalikod sa Karapatan at Pagpapa-ampon sa Isang Anak,*"[17] with Castillo and Merano as parties to the agreement, and SPO2 Fernandez and SPO4 Rapal as witnesses. SPO2 Fernandez claimed that he was surprised that Merano gave up Justine for adoption when they supposedly went there to get Justine back.[18]

On January 21, 2004, the RTC found Marquez guilty beyond reasonable doubt of the crime charged as follows:

> WHEREFORE, premises considered, this Court finds accused AIDA MARQUEZ a.k.a. AIDA PULIDO, **GUILTY BEYOND REASONABLE DOUBT** of KIDNAPPING AND FAILURE TO RETURN A MINOR under Article 270 of the Revised Penal Code as amended by Republic Act. No. 18 and is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA.***
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> For the Civil aspect, accused is ordered to pay private complainant FIFTY THOUSAND PESOS (PHP50,000.00) for moral damage and TWENTY THOUSAND PESOS (PHP20,000.00) for exemplary damage.
>
> Costs against the accused.[19]

The RTC recounted in detail the factual antecedents of the case and made a comprehensive synopsis of the testimonies of all the witnesses presented. In finding for the prosecution, the RTC held that the testimony of the complainant mother, Merano, was enough to convict the accused Marquez because it was credible and was corroborated by documentary evidence.[20]

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[17] Records, p. 209.

[18] TSN, August 26, 2003, pp. 3-4, 8-15, 32-35.

[19] CA *rollo*, p. 27.

[20] *Id.* at 26.

On intermediate appellate review, the Court of Appeals was faced with the lone assignment of error as follows:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF KIDNAPPING AND FAILURE TO RETURN A MINOR WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[21]

On August 29, 2007, the Court of Appeals found Marquez's appeal to be unmeritorious and affirmed the RTC's decision with modifications on the damages awarded, to wit:

WHEREFORE, the instant Appeal is ***DISMISSED***. The assailed Decision, dated January 21 2004, of the Regional Trial Court of Makati City, Branch 140, is ***AFFIRMED with the MODIFICATIONS*** that nominal damages of ₱20,000.00 is hereby awarded in addition to the ₱50,000.00 moral damages, while the award for exemplary damages is accordingly ***deleted*** for lack of basis.[22]

The Court of Appeals, in affirming Marquez's conviction, relied on the satisfaction of the elements of the crime as charged. It said that the conflicting versions of the parties' testimonies did not even matter as the fact remained that Marquez had, at the very least, constructive custody over Justine and she failed to return her when demanded to do so.

The accused Marquez is now before us, still praying for a reversal of her conviction on the same arguments she submitted to the Court of Appeals.[23]

After a painstaking scrutiny of the entire records of this case, this Court finds no reason to reverse the courts below.

Marquez argues that her guilt was not proven beyond reasonable doubt because the elements constituting the crime of serious illegal detention or kidnapping are not present in this case.[24]

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[21] *Id.* at 57.

[22] *Rollo*, p. 17.

[23] *Id.* at 27.

[24] CA *rollo*, pp. 63-64.

The crime of Kidnapping and Serious Illegal Detention falls under Article 267 of the Revised Penal Code, *viz*:

Art. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

Marquez further contends that it is illogical for her to voluntarily divulge to Merano the whereabouts of Justine, even recommending the assistance of police officers, if she were indeed guilty of kidnapping.

Accused is mistaken, if not misled, in her understanding and appreciation of the crime she was charged with and eventually convicted of.

A reading of the charge in the information shows that the act imputed to Marquez was <u>not</u> the illegal detention of a person, but involves her deliberate failure to restore a minor baby girl to her parent after being entrusted with said baby's custody.

Contrary to Marquez's assertions, therefore, she was charged with violation of Article 270, and not Article 267, of the Revised Penal Code.

The Revised Penal Code considers it a crime when a person who has been entrusted with the custody of a minor later on deliberately fails to return said minor to his parent or guardian. This may be found in Article 270, which reads:

Art. 270. Kidnapping and failure to return a minor. — The penalty of *reclusion perpetua* shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians.[25]

This crime has two essential elements:

1. The offender is entrusted with the custody of a minor person; and

2. The offender deliberately fails to restore the said minor to his parents or guardians.[26]

This Court, in elucidating on the elements of Article 270, stated that while one of the essential elements of this crime is that the offender was entrusted with the custody of the minor, what is actually being punished is *not* the kidnapping but the **deliberate** failure of that person to restore the minor to his parents or guardians.[27] As the penalty for such an offense is so severe, the Court further explained what "deliberate" as used in Article 270 means:

> Indeed, the word deliberate as used in Article 270 of the Revised Penal Code must imply something more than mere negligence — **it must be premeditated, headstrong, foolishly daring or intentionally and maliciously wrong**.[28] (Emphasis ours.)

It is clear from the records of the case that Marquez was entrusted with the custody of Justine. Whether this is due to Merano's version of Marquez borrowing Justine for the day, or due to Marquez's version that Merano left Justine at her house, it is undeniable that in both versions, Marquez agreed to the arrangement, *i.e.*, to temporarily take custody of Justine. It does not matter, for the first element to be present, how long said custody lasted as it cannot be denied that Marquez was

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[25] Revised Penal Code, as amended by Republic Act No. 18.

[26] *People v. Bernardo*, 428 Phil. 769, 776 (2002).

[27] *Id.*

[28] *Id.*

the one entrusted with the custody of the minor Justine. Thus, the first element of the crime is satisfied.

As to the second element, neither party disputes that on September 6, 1998, the custody of Justine was transferred or entrusted to Marquez. Whether this lasted for months or only for a couple of days, the fact remains that Marquez had, at one point in time, physical and actual custody of Justine. Marquez's deliberate failure to return Justine, a minor at that time, when demanded to do so by the latter's mother, shows that the second element is likewise undoubtedly present in this case.

Marquez's insistence on Merano's alleged desire and intention to have Justine adopted cannot exonerate her because it has no bearing on her deliberate failure to return Justine to Merano. If it were true that Marquez merely facilitated Justine's adoption, then there was no more need for Merano to contact Marquez and vice-versa, since Merano, as Marquez claimed, had direct access to Castillo. The evidence shows, however, that Merano desperately searched for a way to communicate with Marquez. As testified to by both Merano and Marquez, Marquez frequented the beauty parlor where Merano worked in, and yet, curiously, Marquez was nowhere to be found after September 6, 1998. It took Marquez more than two months before communicating with Merano again, after she supposedly facilitated the adoption of Justine. If Marquez were indeed surprised to learn about the charges against her, she would have made every effort to clear her name when she found out that there was a standing warrant for her arrest. She would have immediately contacted either Merano or Castillo to confront them on why she was being implicated in their arrangement. Finally, even if it were true that Merano subsequently agreed to have Castillo adopt Justine, as evidenced by the "*Kasunduan sa Pagtalikod sa Karapatan at Pagpapa-ampon sa Isang Anak*," this would still not affect Marquez's liability as the crime of kidnapping and failure to return the minor had been fully consummated upon her deliberate failure to return Justine to Merano.

Marquez avers that the prosecution's "evidence has fallen short of the quantum of proof required for conviction" and that

it has "failed to establish [her] guilt with moral certainty."[29] Marquez argues that her testimony was not only straightforward and consistent but also corroborated by a duly respected police officer. She insists that Merano's testimony should not be believed as the only reason Merano filed this charge was because she failed to get the money she demanded from Marquez.[30]

This Court is constrained to once again reiterate the time-honored maxim that the trial court's assessment of the credibility of witnesses is entitled to the highest respect.[31] In *People v. Bondoc*,[32] a case also involving the accused's failure to return a minor, we explained the rationale of this maxim:

> We find no cogent reason to disturb the findings of the trial court. **The issue involved in this appeal is one of credibility, and this Court has invariably ruled that the matter of assigning values to the testimony of witnesses is best performed by the trial courts** because they, unlike appellate courts, can weigh the testimony of witnesses in the light of the demeanor, conduct and attitude of the witnesses at the trial, except when circumstances of weight or influence were ignored or disregarded by them which does not obtain in the present case.
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> **Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight that would have affected the result of the case, this Court will not disturb factual findings of the lower court.** Having had the opportunity of observing the demeanor and behavior of witnesses while testifying, the trial court more than this Court is in a better position to gauge their credibility and properly appreciate the relative weight of the often conflicting evidence for both parties. **When the issue is one of credibility, the trial court's findings are given great weight on appeal.**[33] (Emphases ours.)

The RTC, in finding Merano credible, stated:

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[29] CA *rollo*, p. 67.

[30] TSN, February 20, 2003, pp. 13-14.

[31] *People v. Pastrana*, 436 Phil. 127, 137 (2002).

[32] G.R. No. 98400, May 23, 1994, 232 SCRA 478.

[33] *Id.* at 484-485.

Between the two conflicting allegations, the Court, after taking into account all the testimonies and evidences presented by the prosecution and the defense, finds for the prosecution. The lone testimony of the complainant inspired credibility and was corroborated by the documents, to wit, she is the mother of the child and she searched for her child when accused failed to return her baby, filed this complaint when she failed to get her child and she was able to recover the child from the DSWD at its Reception and Study Center for Children (RSCC) as evidenced by the Discharge Slip after accused informed her that the child was with Modesto Castillo. If indeed the complainant had given up or have sold her baby, she would not have exhausted all efforts possible to find her baby. Further, the child would not have been in RSCC but it would have been with Modesto Castillo as per the document allegedly executed by Complainant. The testimony of the complainant was straightforward and devoid of any substantial inconsistencies.[34]

The RTC found Marquez's defense of denial to be weak. It also outlined the inconsistencies in Marquez's testimonies which further destroyed her credibility.

The manner of appreciating the defense of denial was discussed by this Court in this wise:

As to the defense of denial, the same is inherently weak. Denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters. Like alibi, denial is an inherently weak defense, which cannot prevail over the positive and credible testimonies of the prosecution witnesses. Denial cannot prevail over the positive testimonies of prosecution witnesses who were not shown to have any ill motive to testify against petitioner.[35]

Merano's credibility has been established by the trial court, to which the Court of Appeals agreed. This Court finds no reason to depart from these findings, especially since it was the trial court which had the opportunity to evaluate and assess the credibility of the witnesses presented before it. Both courts found

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[34] CA *rollo*, p. 26.

[35] *Madsali v. People*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 608.

Merano's testimony to be straightforward and consistent. Thus, Marquez's denial and inconsistent statements cannot prevail over Merano's positive and credible testimony.

Anent Marquez's claim that SPO2 Fernandez's testimony corroborated hers, a perusal of the transcript of SPO2 Fernandez's testimony will reveal that its focus was mainly on how the agreement on Justine's adoption came to be. The fact that SPO2 Fernandez may have corroborated Marquez's defense of adoption by testifying that he witnessed how Merano gave up her child for adoption to Castillo is irrelevant. As we have discussed above, the crime of kidnapping and failure to return a minor had been fully consummated way before the execution of the agreement in February 1999, the validity of which is not in issue before us now. Moreover, even if Merano had indeed given up Justine to Castillo on February 12, 1999, Merano's consent to have Justine adopted in **1999** has no impact on her demand to regain custody of Justine in **1998**.

In *People v. Bernardo*,[36] we held that the crime of kidnapping and failure to return a minor under Article 270 of the Revised Penal Code is clearly analogous to illegal and arbitrary detention or arrest, thereby justifying the award of moral damages.

The award of nominal damages is also allowed under Article 2221 of the New Civil Code which states that:

> **Article 2221.** Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

It took Merano almost a year to legally recover her baby. Justine was only three months old when this whole debacle began. She was already nine months old when Merano saw her again. She spent her first birthday at the Reception and Study Center for Children of the Department of Social Welfare and Development.[37]

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[36] *Supra* note 26 at 777.

[37] TSN, November 28, 2002, p. 33.

Evidently, Merano's right as a parent which was violated and invaded must be vindicated and recognized, thereby justifying the award of nominal damages.

WHEREFORE, the Decision of the Court of Appeals dated August 29, 2007 in CA-G.R. CR. HC No. 00467 finding Aida Marquez *GUILTY* beyond reasonable doubt of the crime of *KIDNAPPING AND FAILURE TO RETURN A MINOR* under Article 270 of the Revised Penal Code is hereby *AFFIRMED*. No Costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181822. April 13, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL BALUYA *y* NOTARTE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS; ADEQUATELY AND SATISFACTORILY PROVED IN CASE AT BAR. — The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code (RPC) are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority;

or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. In the instant case, the Court is convinced that the prosecution has adequately and satisfactorily proved all the aforesaid elements of kidnapping and serious illegal detention.

2. ID.; ID.; ID.; DEPRIVATION OF LIBERTY; ELUCIDATED; CASE AT BAR. — As to the second element of the crime, the deprivation required by Article 267 of the RPC means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. It involves a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move. If the victim is a child, it also includes the intention of the accused to deprive the parents of the custody of the child. In other words, the essence of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation. In the present case, Glodil was in the control of appellant as he was kept in a place strange and unfamiliar to him. Because of his tender age and the fact that he did not know the way back home, he was then and there deprived of his liberty. The intention to deprive Glodil's parents of his custody is also indicated by appellant's actual taking of the child without the permission or knowledge of his parents, of subsequently calling up the victim's mother to inform her that the child is in his custody and of threatening her that she will no longer see her son if she failed to show his wife to him. The CA is correct in holding that for kidnapping to exist, it is not necessary that the offender kept the victim in an enclosure or treated him harshly. Where the victim in a kidnapping case is a minor, it becomes even more irrelevant whether the offender forcibly restrained the victim. As discussed above, leaving a child in a place from which he did not know the way home, even if he had the freedom to roam around the place of detention, would still amount to deprivation of liberty. For under such a situation, the child's freedom remains at the mercy and control of the abductor.

3. ID.; ID.; ID.; ID.; WHERE THE VICTIM IS A MINOR, LACK OF CONSENT IS PRESUMED; CASE AT BAR. — Appellant alleges that Glodil was not forcibly taken, but instead voluntarily

went with appellant to Novaliches. The general rule is that the prosecution is burdened to prove lack of consent on the part of the victim. However, where the victim is a minor, lack of consent is presumed. Aside from his self-serving testimony, appellant failed to present competent evidence to overcome such presumption. Thus, the presumption stands that Glodil, being only nine (9) years old on August 31, 2003, is incapable of giving consent and is incompetent to assent to his seizure and illegal detention.

4. ID.; ID.; ID.; ID.; MOTIVE, NOT BEING AN ELEMENT OF THE CRIME, IS IRRELEVANT. — The defense further argues that appellant had no intention to detain Glodil and that his purpose is to merely use him as "a leverage against Glodil's mother, who refused to produce Marissa, his live-in partner." The Court, however, cannot fathom how appellant could have used Glodil as leverage or bargaining tool to force Marissa to meet with him without depriving him of his liberty. In any case, appellant's motive is not relevant, because it is not an element of the crime.

5. ID.; ID.; ID.; MINORITY OF THE VICTIM; ALLEGED IN THE INFORMATION AND WAS NOT DISPUTED IN CASE AT BAR. — As to the last element of the crime, appellant contends that the victim's minority was not sufficiently proven. However, the Court agrees with the Office of the Solicitor General (OSG) that the victim's minority was alleged by the prosecution in the information and was not disputed. During his direct examination, the victim testified as to his minority claiming that, at the time that he was presented at the witness stand, he was only 10 years old. This fact was affirmed by his mother who also testified as to his minority at the time that he was abducted. As correctly contended by the OSG, appellant did not raise any issue as to the victim's minority when the victim's and his mother's testimonies were offered.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON ARE ENTITLED TO GREAT WEIGHT AND RESPECT BY THE SUPREME COURT. — [T]he trial court gave credence to the testimonies of Glodil and his mother finding them to be trustworthy and believable. The age-old rule is that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court

which forms its first-hand impressions as witnesses testify before it. It is thus no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the CA affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. In the instant case, the Court finds no reason to depart from this rule. Appellant failed to present sufficient evidence to prove that the RTC and the CA overlooked certain facts and circumstances which, if considered, might affect the result of the case.

7. ID.; ID.; DENIAL; AN INHERENTLY WEAK DEFENSE WHICH CANNOT PREVAIL OVER POSITIVE AND CREDIBLE TESTIMONIES OF PROSECUTION WITNESSES. — [A]gainst the categorical testimonies of the prosecution witnesses, appellant can only offer the defense of denial. However, denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters. Like alibi, denial is an inherently weak defense, which cannot prevail over the positive and credible testimonies of the prosecution witnesses. Denial cannot prevail over the positive testimonies of prosecution witnesses who, as in this case, were not shown to have any ill motive to testify against petitioner.

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.*:

On appeal before the Court is the Decision[1] of the Court of Appeals (CA), dated September 25, 2007 in CA-G.R. CR No. 02370, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 38, dated April 3, 2006 in Criminal Case No. 03-218310, finding herein appellant Joel Baluya guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention and sentencing him to suffer the penalty of *reclusion perpetua*.

In an Information dated September 4, 2003, appellant was indicted before RTC of Manila for the crime of kidnapping and serious illegal detention, allegedly committed as follows:

> That on or about August 31, 2003, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there willfully, unlawfully and feloniously kidnap, take, detain and carry away one GLODIL CASTILLON *Y* MAAMBONG, a minor, nine (9) years old, son of Gloria Castillon *y* Maambong, while the latter was playing outside of their residence along Laon Laan St., Sampaloc, this City, by poking a knife on his back, twisting his hands and forcibly bringing him to Novaliches, Quezon City, thus detaining and depriving him of his liberty under restraint and against his will and consent.
>
> Contrary to law.[3]

On November 5, 2003, appellant, duly assisted by his counsel, entered a plea of "not guilty" to the offense charged.[4]

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[1] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court) with Associate Justices Portia Aliño-Hormachuelos and Estella M. Perlas-Bernabe, concurring.

[2] Penned by Judge Priscilla J. Baltazar-Padilla (now a member of the Court of Appeals).

[3] Records, p. 1.

[4] See RTC Order, *id.* at 8.

Thereafter, trial ensued.

The facts, as established by the prosecution, are as follows:

Around 10:30 a.m. of August 31, 2003, the victim, Glodil Castillon (Glodil), who at that time was nine (9) years old, was playing in front of their house located along Laon Laan St., Sampaloc, Manila.[5] While in the midst of play, he saw herein appellant. Appellant then called Glodil's attention and summoned him to come forth.[6] Immediately thereafter, appellant seized him by twisting his right arm, pointed a knife at him and told him that if appellant's wife, Marissa, would not show up Glodil's mother would not see him anymore.[7] Appellant and Glodil then boarded a jeepney and went to Blumentritt.[8] When they were in Blumentritt, appellant called up Glodil's mother, Gloria, telling her to show him his wife so that she will also be able to see Glodil.[9] Gloria then asked appellant to allow her to talk to her son as proof that Glodil was indeed with him.[10] Appellant then passed the telephone to Glodil, but the latter was only able to momentarily talk with his mother because appellant immediately grabbed the telephone from him.[11] Thereafter, Glodil's mother reported the incident to the police.[12] Meanwhile, appellant and Glodil again boarded a jeepney and went to Novaliches.[13] It was Glodil's first time to reach Novaliches.[14] Upon reaching Novaliches "Bayan," they headed straight to a barbershop where they fetched appellant's three minor children.[15] They then

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[5] TSN, April 19, 2004, pp. 4-6.

[6] TSN, April 21, 2004, p. 5.

[7] *Id.* at 5-6; TSN, April 19, 2004, pp. 7-8.

[8] TSN, April 21, 2004, p. 6.

[9] *Id.* at 7-8; TSN, October 13, 2004, p. 7.

[10] TSN, October 13, 2004, p. 7.

[11] *Id.* at 8; TSN, April 21, 2004, p. 8.

[12] TSN, October 13, 2004, p. 8.

[13] TSN, April 21, 2004, p. 9.

[14] *Id.*

[15] *Id.* at 12.

proceeded to a church where appellant left his children and Glodil in the playground within the church premises.[16] Glodil played, ate and slept with appellant's children until the afternoon of the same day. During that period, appellant returned from time to time to check on them and bring them food.[17] At 3:30 p.m. of the same day, appellant again called up Gloria and, while shouting, asked if his wife was already there.[18] He then threatened Gloria by saying that *"kapag hindi mo ipakita sa akin si Marissa, hindi mo na makikita ang anak mo."*[19] Subsequently, Gloria was able to talk to Marissa and convince her to meet with appellant at the Novaliches public market.[20] Unknown to appellant, the police already had a plan to arrest him, which they did when he showed up to meet with his wife. In the meantime, around 4:00 p.m. of August 31, 2003, Glodil was able to seize an opportunity to escape while appellant was away.[21] He walked from the place where appellant left him in Novaliches until he reached their house and it took him around four hours to do so.[22] He was able to trace back their house by reading the signboard of the jeepneys and following the route of those that pass by his place of residence.[23]

On the other hand, the defense interposed the defense of denial alleging that on August 31, 2003, appellant went to the house of his common-law-wife's aunt, Gloria, at Laon Laan St. in Sampaloc, Manila for the purpose of asking the latter if his wife, with whom he has been separated, has been there.[24] Gloria told him that his wife went to their house once but has not seen her since then.[25]

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[16] *Id.* at 13.

[17] TSN, April 19, 2004, pp. 12-13; TSN, April 21, 2004, p. 14.

[18] TSN, October 13, 2004, pp. 9-10.

[19] *Id.* at 10.

[20] *Id.* at 13-14.

[21] TSN, April 19, 2004, p. 14; TSN, April 21, 2004, p. 16.

[22] TSN, April 19, 2004, pp. 14-15.

[23] TSN, April 21, 2004, pp. 14-18.

[24] TSN, October 12, 2005, pp. 3-4.

[25] *Id.* at 5-6.

After an hour of talking with Gloria, appellant bid her goodbye. It was then that Glodil approached him and asked if he could go with him to Novaliches.[26] Since Glodil already went with him to Novaliches several times in the past, appellant acceded to the child's request on the condition that he ask his mother for permission, which the latter readily gave.[27] Appellant and Glodil then proceeded to the former's house in Novaliches.[28] After taking lunch, appellant took his children and Glodil to the playground and left them there.[29] When he returned around 4:30 p.m., Glodil was no longer there.[30] His children told him that Glodil's aunt, by the name of Rosaly, fetched him.[31] Appellant then brought home his children. Around 6:00 p.m. of the same day, the police, together with Gloria and his wife, arrived at his house wherein he was apprehended and brought to a police station in Novaliches.[32] After having been subjected to a medical examination, he was turned over to Police Station 4 in Balic-Balic, Manila, where he was subsequently charged with kidnapping.[33] Appellant alleges that his wife and her aunt came up with the scheme of accusing him with kidnapping so that his wife would be able to take their children from him.[34] Appellant also claims that Gloria is angry with "*warays*" and because he is a "*waray*" she is also angry with him.[35]

In its Decision dated April 3, 2006, the RTC found the version of the prosecution credible and, accordingly, rendered judgment as follows:

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[26] *Id.* at 6-7.

[27] *Id.* at 7-8.

[28] *Id.* at 8.

[29] *Id.*

[30] *Id.* at 10.

[31] *Id.*

[32] *Id.* at 11-12.

[33] *Id.* at 14.

[34] *Id.* at 11.

[35] *Id.* at 25.

WHEREFORE, judgment is hereby rendered finding accused Joel Baluya GUILTY of the crime of Kidnapping with Serious Illegal Detention and sentences him to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law and to pay the costs.

SO ORDERED.[36]

Aggrieved by the trial court's decision, appellant appealed his conviction to the Court of Appeals (CA).

The parties filed their respective appeal briefs.[37]

On September 25, 2007, the CA rendered its Decision, the dispositive portion of which reads thus:

WHEREFORE, the DECISION DATED APRIL 3, 2006 is AFFIRMED, subject to the modification that accused JOEL BALUYA *y* NOTARTE is ordered to pay to victim Glodil M. Castillon the amounts of ₱30,000.00 as moral damages and of ₱15,000.00 as nominal damages.

Costs of suit to be paid by the accused.

SO ORDERED.[38]

On October 24, 2007, appellant filed his Notice of Appeal of the CA Decision.[39]

On June 16, 2008, this Court required the parties to file their respective supplemental briefs if they so desired.[40] Both appellant and appellee, however, manifested that they were adopting their previous arguments and that they were willing to submit the case on the basis of the records already submitted.

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[36] Records, p. 85.

[37] Brief for the Accused-Appellant, CA *rollo*, pp. 41-52; Brief for the Plaintiff-Appellee, CA *rollo*, pp. 73-84.

[38] CA *rollo*, p. 105.

[39] *Id.* at 107.

[40] *Rollo*, p. 23.

Thus, the following Assignment of Errors in appellant's brief, dated October 27, 2006, are now deemed adopted in this present appeal:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES THAT THE VICTIM WAS FORCIBLY TAKEN AND DEPRIVED OF HIS LIBERTY UNDER RESTRAINT AND AGAINST HIS WILL AND CONSENT.

III

THE COURT *A QUO* GRAVELY ERRED IN FAILING TO DETERMINE THE ALLEGATION OF MINORITY OF THE VICTIM.[41]

Appellant argues that the prosecution failed to prove the presence of all the elements of the crime charged. In particular, the defense contends that there is no evidence to show that the victim was deprived of his liberty.

The Court is not persuaded.

The elements of kidnapping and serious illegal detention under Article 267[42] of the Revised Penal Code (RPC) are:

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[41] CA *rollo*, p. 43.

[42] ART. 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death;

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

1. the offender is a private individual;
2. he kidnaps or detains another or in any other manner deprives the latter of his liberty;
3. the act of detention or kidnapping is illegal; and
4. in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.[43]

In the instant case, the Court is convinced that the prosecution has adequately and satisfactorily proved all the aforesaid elements of kidnapping and serious illegal detention.

The presence of the first element is not in issue as there is no dispute that appellant is a private individual.

As to the second element of the crime, the deprivation required by Article 267 of the RPC means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time.[44] It involves a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move.[45] If the victim is a child, it also includes the intention of the accused to deprive the parents of the custody of the child.[46] In other

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The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were presented in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[43] *People v. Madsali,* G.R. No. 179570, February 4, 2010, 611 SCRA 596, 615-616.

[44] *People v. Siongco,* G.R. No. 186472, July 5, 2010, 623 SCRA 501, 511.

[45] *Id.*

[46] *People v. Acbangin,* 392 Phil. 232, 240 (2000).

words, the essence of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.[47] In the present case, Glodil was in the control of appellant as he was kept in a place strange and unfamiliar to him. Because of his tender age and the fact that he did not know the way back home, he was then and there deprived of his liberty. The intention to deprive Glodil's parents of his custody is also indicated by appellant's actual taking of the child without the permission or knowledge of his parents, of subsequently calling up the victim's mother to inform her that the child is in his custody and of threatening her that she will no longer see her son if she failed to show his wife to him.

Appellant's arguments that the victim is free to go home if he wanted to because he was not confined, detained or deprived of his liberty and that there is no evidence to show that Glodil sustained any injury, cannot hold water. The CA is correct in holding that for kidnapping to exist, it is not necessary that the offender kept the victim in an enclosure or treated him harshly. Where the victim in a kidnapping case is a minor, it becomes even more irrelevant whether the offender forcibly restrained the victim.[48] As discussed above, leaving a child in a place from which he did not know the way home, even if he had the freedom to roam around the place of detention, would still amount to deprivation of liberty.[49] For under such a situation, the child's freedom remains at the mercy and control of the abductor.[50] It remains undisputed that it was his first time to reach Novaliches and that he did not know his way home from the place where he was left. It just so happened that the victim had the presence of mind that, when he saw an opportunity to escape, he ran away from the place where appellant left him. Moreover, he is intelligent enough to read the signboards of the passenger jeepneys he saw and follow the route of the ones going to his place of residence.

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[47] *People v. Obeso,* 460 Phil. 625, 634 (2003).

[48] *People v. Castillo,* 469 Phil. 87, 109 (2004).

[49] *Id.*

[50] *Id.*

Appellant alleges that Glodil was not forcibly taken, but instead voluntarily went with appellant to Novaliches. The general rule is that the prosecution is burdened to prove lack of consent on the part of the victim. However, where the victim is a minor, lack of consent is presumed.[51] Aside from his self-serving testimony, appellant failed to present competent evidence to overcome such presumption. Thus, the presumption stands that Glodil, being only nine (9) years old on August 31, 2003, is incapable of giving consent and is incompetent to assent to his seizure and illegal detention.

The defense further argues that appellant had no intention to detain Glodil and that his purpose is to merely use him as "a leverage against Glodil's mother, who refused to produce Marissa, his live-in partner." The Court, however, cannot fathom how appellant could have used Glodil as leverage or bargaining tool to force Marissa to meet with him without depriving him of his liberty. In any case, appellant's motive is not relevant, because it is not an element of the crime.

With respect to the third element of the offense charged, the prosecution proved that appellant's act of detaining the victim was without lawful cause.

As to the last element of the crime, appellant contends that the victim's minority was not sufficiently proven. However, the Court agrees with the Office of the Solicitor General (OSG) that the victim's minority was alleged by the prosecution in the information and was not disputed.[52] During his direct examination, the victim testified as to his minority claiming that, at the time that he was presented at the witness stand, he was only 10 years old.[53] This fact was affirmed by his mother who also testified as to his minority at the time that he was abducted.[54] As correctly contended by the OSG, appellant did not raise any issue as to

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[51] *People v. Siongco, supra* note 44, at 512.

[52] See records, p. 1.

[53] TSN, April 19, 2004, p. 89.

[54] TSN, October 13, 2004, pp. 4-5.

the victim's minority when the victim's and his mother's testimonies were offered.

Central to the issues raised in the Brief filed by appellant is a question of the factual findings of the RTC. More particularly, appellant questions the credibility of the witnesses for the prosecution claiming that it is easy for the victim to fabricate his story and falsely claim that he was forcibly taken at knife point.

However, the trial court gave credence to the testimonies of Glodil and his mother finding them to be trustworthy and believable. The age-old rule is that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court which forms its first-hand impressions as witnesses testify before it.[55] It is thus no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify.[56] Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the CA affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.[57] In the instant case, the Court finds no reason to depart from this rule. Appellant failed to present sufficient evidence to prove that the RTC and the CA overlooked certain facts and circumstances which, if considered, might affect the result of the case.

Also, against the categorical testimonies of the prosecution witnesses, appellant can only offer the defense of denial. However, denial is a self-serving negative evidence, which cannot be given

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[55] *People v. Alvin del Rosario,* G.R. No. 189580, February 9, 2011; *People v. Dennis D. Manulit,* G.R. No. 192581, November 17, 2010; *People v. Lacaden,* G.R. No. 187682, November 25, 2009, 605 SCRA 784, 794.

[56] *People v. Lacaden, id.* at 794-795.

[57] *Id.*

greater weight than that of the declaration of a credible witness who testifies on affirmative matters.[58] Like alibi, denial is an inherently weak defense, which cannot prevail over the positive and credible testimonies of the prosecution witnesses.[59] Denial cannot prevail over the positive testimonies of prosecution witnesses who, as in this case, were not shown to have any ill motive to testify against petitioner.[60]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 02370, dated September 25, 2007, finding appellant Joel Baluya *y* Notarte guilty beyond reasonable doubt of kidnapping and serious illegal detention, is *AFFIRMED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182262. April 13, 2011]

ROMULO B. DELA ROSA, *petitioner, vs.* **MICHAELMAR PHILIPPINES, INC., substituted by OSG SHIPMANAGEMENT MANILA, INC.,**[*] **and/or MICHAELMAR SHIPPING SERVICES, INC.,** *respondents.*

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[58] *People v. Madsali, supra* note 43, at 608.

[59] *Id.*

[60] *Id.*

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated July 10, 2010.

[*] *See* CA Resolution dated November 12, 2007; CA *rollo*, p. 268.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DECISION, WHEN FINAL AND EXECUTORY. — A decision issued by a court becomes final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.

2. ID.; ID.; APPEALS; APPEAL FROM THE NATIONAL LABOR RELATIONS COMMISSION TO THE COURT OF APPEALS; RULE 65 OF THE RULES OF COURT GOVERNS THE PERIOD OR MANNER OF THE APPEAL; PETITION FOR *CERTIORARI,* TIMELY FILED IN CASE AT BAR. — The period or manner of *appeal* from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home v. National Labor Relations Commission*. Section 4 of Rule 65, as amended, *states that the petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed*. Record shows that Dela Rosa received a copy of the November 24, 2005 Resolution of the NLRC, denying his motion for reconsideration on December 8, 2005. He had sixty (60) days, or until February 6, 2006, to file his petition for *certiorari*. February 6, 2006, however, was a Sunday. Thus, Dela Rosa filed his petition the next working day, or on February 7, 2006. Undoubtedly, Dela Rosa's petition was timely filed.

3. ID.; ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; SUPREME COURT'S JUDICIAL REVIEW IS LIMITED ONLY TO REVIEWING ONLY ERRORS OF LAW, NOT OF FACT. — It is evident that the issue raised in this petition is the correctness of the factual findings of the LA and the NLRC. The rule is that the Supreme Court is not a trier of facts. In a petition for review on *certiorari*, the scope of the Supreme Court's judicial review is limited to reviewing only errors of law, not of fact. This doctrine applies with greater force in labor cases inasmuch as factual questions are mainly for the labor tribunals to resolve. While this Court has recognized exceptions to this rule, none of these exceptions finds application here.

4. ID.; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES ARE GENERALLY BINDING AS LONG AS THEY ARE SUPPORTED SUBSTANTIALLY BY EVIDENCE IN THE RECORD OF THE CASE. — In *Talidano v. Falcon Maritime & Allied Services, Inc.* and *Abacast Shipping & Management Agency, Inc. v. NLRC*, we held that a ship's logbook is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against employees prior to their dismissal. Therefore, the LA and the NLRC cannot be faulted for giving weight to the logbook entries. It is trite to say that the factual findings of quasi-judicial bodies are generally binding as long as they are supported substantially by evidence in the record of the case. This is especially so where, as here, the agency and its subordinate who heard the case in the first instance are in full agreement as to the facts. Dela Rosa failed to convince us that the factual findings of the LA and the NLRC are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.

5. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DUE PROCESS REQUIREMENTS, NOT COMPLIED WITH IN CASE AT BAR. — [W]e note that Dela Rosa was not accorded due process. Under Article 277(b) of the Labor Code, the employer must send the employee, who is about to be terminated, a written notice stating the causes for termination, and must give the employee the opportunity to be heard and to defend himself. For officers and crew who are working in foreign vessels involved in overseas shipping, there must be compliance with the applicable laws on overseas employment, as well as with the regulations issued by the Philippine Overseas Employment Administration, such as those embodied in the Standard Contract for Seafarers Employed Abroad (Standard Contract). Section 17 of the Standard Contract supplies the disciplinary procedure against an erring seafarer x x x In this case, there was no showing that respondents complied with the x x x procedure. The only notice allegedly given to Dela Rosa was a *letter warning* dated March 16, 2003. Such letter, however, did not cite the particular acts constituting Dela Rosa's alleged poor performance. Likewise, there was no formal investigation of the charges. Certainly, respondents failed to observe the necessary procedural safeguards.

6. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; PROPER IN CASE OF VIOLATION OF EMPLOYEE'S RIGHT TO DUE PROCESS IN A LABOR CASE. — In *Agabon v. NLRC,* we ruled that if the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. The violation of petitioner's right to due process only warrants the payment of indemnity in the form of nominal damages, the amount of which is addressed to the sound discretion of the Court, taking into consideration the relevant circumstances. Accordingly, we deem the amount of ₱30,000.00 as nominal damages sufficient vindication of Dela Rosa's right to due process under the circumstances of this case.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.
Del Rosario Bagamasbad & Raboca for respondents.

D E C I S I O N

NACHURA, *J.*:

Petitioner Romulo B. dela Rosa (Dela Rosa) appeals by *certiorari* under Rule 45 of the Rules of Court the August 22, 2007 Amended Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 93115, and the March 18, 2008 Resolution[2] denying its reconsideration.

The antecedents —

Dela Rosa was hired by respondent Michaelmar Philippines, Inc., for and on behalf of its principal Michaelmar Shipping Services, Inc. (respondent), as 3rd Engineer on board the vessel MT "Goldmar" for a period of nine months.[3] He boarded MT

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Vicente Q. Roxas and Ramon R. Garcia, concurring; *rollo,* pp. 29-30.

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

[3] Records, p. 3.

"Goldmar" on February 15, 2003. However, on April 14, 2003, he was discharged for his alleged poor performance, and was repatriated to the Philippines.

Claiming termination without just cause and due process, Dela Rosa filed a complaint[4] for illegal dismissal, nonpayment of salaries/wages, payment of moral and exemplary damages and attorney's fees with the Labor Arbiter (LA), against respondents.

Traversing the complaint, respondents alleged that Dela Rosa was validly terminated. They averred that Dela Rosa's work performance was unsatisfactory, and that despite the advice given to him by his superiors, Dela Rosa's job performance did not improve; he continued to be incompetent and inefficient. On March 16, 2003, Chief Engineer Stephen B. Huevas (Engr. Huevas) issued a *warning letter* to Dela Rosa, but he refused to receive the same. Worse, on April 9, 2003, Dela Rosa simply stopped working. Left with no recourse, Engr. Huevas sent a letter dated April 9, 2003 to the principal, communicating his intention to disembark Dela Rosa. On April 14, 2003, Dela Rosa was repatriated upon payment of all the benefits due him. Respondents, therefore, prayed for the dismissal of the complaint.[5]

On March 31, 2004, the LA rendered a decision[6] dismissing the complaint. In so ruling, the LA made much of Dela Rosa's failure to deny or rebut respondents' allegations that he refused to receive the *warning letter* on March 16, 2003, and then stopped working on April 9, 2003, without any valid reason. Dela Rosa's failure to rebut these serious allegations, the LA held, gave rise to an inference that the same were true. The LA further lent credence to the entries in the logbook and further declared that Dela Rosa already waived his right to contest the said entries because he refused to receive the *warning letter* addressed to him.

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[4] *Id.* at 2.

[5] *Id.* at 27-43.

[6] *Id.* at 89-95.

The LA disposed, thus:

WHEREFORE, a Decision is hereby rendered DISMISSING the case for lack of merit.[7]

Dela Rosa appealed to the National Labor Relations Commission (NLRC). On July 29, 2005, the NLRC issued a Resolution[8] dismissing the appeal and affirming the LA. In so ruling, the NLRC sustained respondents' claim that Dela Rosa neglected his duty as 3rd Engineer and abandoned his job, justifying the termination of his employment.

Dela Rosa filed a motion for reconsideration,[9] but the NLRC denied it on November 24, 2005.[10]

Dela Rosa then went to the CA via *certiorari*. On January 31, 2007, the CA rendered a Decision[11] reversing the NLRC. It held that respondents failed to allege and prove with particularity the charges against Dela Rosa. The particular acts which would indicate Dela Rosa's unsatisfactory performance were neither specified nor described in the *warning letter* and were never entered in the ship's logbook. It declared respondents' pieces of evidence as self-serving, which could not support the findings of lawful termination. The CA added that Dela Rosa's alleged incompetence, disobedience, and refusal to work while on board MT "Goldmar" did not constitute a clear case of insubordination and abandonment of work that would warrant his termination.

The CA decreed that:

WHEREFORE, the foregoing considered, the **Petition** is ***GRANTED*** and the **assailed Resolutions** are ***ANNULLED and SET ASIDE***. ***Accordingly,*** Petitioner Romulo B. dela Rosa is hereby declared to have been illegally dismissed from employment and private

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[7] *Id.* at 95.

[8] *Id.* at 137-140.

[9] *Id.* at 145-153.

[10] *Id.* at 172-174.

[11] CA *rollo*, pp. 180-190.

respondents are therefore ordered to pay him his salaries corresponding to the unexpired portion of his employment contract. No costs.

SO ORDERED.[12]

Dela Rosa's victory, however, was only fleeting because on a motion for reconsideration, the CA rendered an Amended Decision, *viz.*:

> After a careful study of the grounds relied upon by [respondents], this court finds the instant motion meritorious, considering that the 24 November 2005 Resolution of the National Labor Relations Commission has already become final and executory on February 28, 2006 and the corresponding entry of judgment thereon issued on June 15, 2006.
>
> Jurisprudence dictates that once a judgment becomes final, all the issues between the parties are deemed resolved and laid to rest. Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that once a judgment has become final the winning party be not be [sic] deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end [sic]controversies, courts should frown upon any attempt to prolong them.
>
> As such, it becomes immutable and unalterable, and may no longer be modified in any respect except only to correct clerical errors or mistake.
>
> WHEREFORE, the foregoing considered, the **Motion for Reconsideration** is hereby **GRANTED** and Our assailed decision considered academic.
>
> SO ORDERED.[13]

Dela Rosa filed a motion for reconsideration on September 30, 2007. Pending resolution of petitioner's motion, respondent Michaelmar Philippines, Inc. filed a *Manifestation/Motion to*

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[12] *Id.* at 189.

[13] *Supra* note 1, at 30.

Substitute Michaelmar Phils.,[14] *Inc. with OSG Shipmanagement Manila, Inc.* (OSG Shipmanagement). It alleged that OSG Shipmanagement is the new manning agent in the Philippines of Michaelmar Shipping Services, Inc., and it assumes the full responsibility for all contractual obligations to seafarers originally recruited and processed by Michaelmar Philippines, Inc.[15] The CA noted and granted the motion in its Resolution[16] dated November 12, 2007, and accordingly ordered the impleading of OSG Shipmanagement as respondent, in substitution of Michaelmar Philippines, Inc.

On March 18, 2008, the CA issued a Resolution[17] denying Dela Rosa's motion for reconsideration.

Hence, this appeal by Dela Rosa, arguing that:

I

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN PROMULGATING THE AMENDED DECISION OF 22 AUGUST 2007 REVERSING AND SETTING THE EARLIER DECISION DATED 31 JANUARY 2007 ON THE GROUND THAT THE CASE HAS ALREADY BECOME MOOT AND ACADEMIC.

II

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN ERRONEOUSLY APPLYING THE JURISPRUDENCE LAID DOWN IN THE CASE OF *SALVA VS. CA*, 304 SCRA 632.

III

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN ERRONEOUSLY APPRECIATING THE ENTRY OF JUDGMENT ISSUED BY THE NATIONAL LABOR RELATIONS COMMISSION ON JUNE 15, 2006 THEREBY GIVING IT THE EFFECT OF DISMANTLING THE RIGHT OF THE PETITIONER

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[14] CA *rollo*, pp. 220-222.

[15] *Id.* at 223.

[16] *Id.* at 268.

[17] *Supra* note 2.

TO REMEDIAL MEASURES IN PROTECTION OF HIS RIGHTS AS SET FORTH BY LAW.[18]

The CA dismissed Dela Rosa's petition on ground of mootness. It considered the November 24, 2005 NLRC Resolution sustaining Dela Rosa's dismissal as final and executory. As such, the resolution became immutable and unalterable.

The CA was wrong.

A decision issued by a court becomes final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.[19]

The period or manner of *appeal* from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home v. National Labor Relations Commission*.[20] Section 4 of Rule 65, as amended, *states that the petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed*.

Record shows that Dela Rosa received a copy of the November 24, 2005 Resolution of the NLRC, denying his motion for reconsideration on December 8, 2005.[21] He had sixty (60) days, or until February 6, 2006, to file his petition for *certiorari*. February 6, 2006, however, was a Sunday. Thus, Dela Rosa filed his petition the next working day, or on February 7, 2006. Undoubtedly, Dela Rosa's petition was timely filed.

In *Leonis Navigation Co., Inc. v. Villamater*,[22] we explained:

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[18] *Rollo*, pp. 4-5.

[19] *Delima v. Gois*, G.R. No. 178352, June 17, 2008, 554 SCRA 731, 738.

[20] 356 Phil. 811, 824 (1998).

[21] *See* Registry Return Card; records, p. 179.

[22] G.R. No. 179169, March 3, 2010, 614 SCRA 182.

[J]udicial review of decisions of the NLRC is sought via a petition for *certiorari* under Rule 65 of the Rules of Court, and the petition should be filed before the CA, following the strict observance of the hierarchy of courts. Under Rule 65, Section 4, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. Thus, although the petition was not filed within the 10-day period, petitioners reasonably filed their petition for *certiorari* before the CA within the 60-day reglementary period under Rule 65.

Further, a petition for *certiorari* does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically.

The CA, therefore, could grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record. Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void *ab initio*; hence, the decision or resolution never became final and executory.[23]

Indubitably, the issuance of an entry of judgment by the NLRC cannot render Dela Rosa's petition for *certiorari* as moot and academic. Thus, the CA erred for ruling otherwise.

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[23] *Id.* at 191-192.

On the merits of the case. Dela Rosa seeks a reversal of the findings of fact of the LA and the NLRC. He insists that he was terminated without just cause and due process.

It is evident that the issue raised in this petition is the correctness of the factual findings of the LA and the NLRC. The rule is that the Supreme Court is not a trier of facts. In a petition for review on *certiorari*, the scope of the Supreme Court's judicial review is limited to reviewing only errors of law, not of fact.[24] This doctrine applies with greater force in labor cases inasmuch as factual questions are mainly for the labor tribunals to resolve.[25] While this Court has recognized exceptions to this rule,[26] none of these exceptions finds application here.

Dela Rosa was dismissed for his alleged poor performance. To support the claim of valid dismissal, respondents presented the following entries[27] in the ship's logbook, *viz.*:

WARNING LETTER WAS PRESENTED TO THIRD ENGINEER R. DELA ROSA CONCERNING HIS PERFORMANCE AS THIRD ENGINEER ON BOARD MT GOLDMAR. HOWEVER, HE REFUSED TO AFFIX HIS SIGNATURE OR ACKNOWLEDGE SAID WARNING LETTER, IN SHORT, HE HAS NO INTENTION OR WHATSOEVER TO IMPROVE.[28]

@0800HRS 09 APRIL '03 THIRD ENG'R R. DELA ROSA CEASES TO WORK WITHOUT MY KNOWLEDGE AND INSTRUCTION, AS WELL AS A VALID REASON NOT TO BE IN THE ENGINE ROOM TO CARRY OUT HIS ROUTINE DUTY/RESPONSIBILITIES.[29]

Dela Rosa claims that the entries were fabricated. However, he did not bother to present proof to substantiate his assertion.

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[24] See *German Machineries Corp. v. Endaya*, 486 Phil. 545, 558 (2004).

[25] *Eastern Overseas Employment Center, Inc. v. Bea*, 512 Phil. 749, 754 (2005).

[26] See *German Machineries Corp. v. Endaya, supra* note 24, at 558.

[27] Annexes "C" and "D"; records, pp. 48 and 49, respectively.

[28] *Id.* at 48.

[29] *Id.* at 49.

In *Talidano v. Falcon Maritime & Allied Services, Inc.*[30] and *Abacast Shipping & Management Agency, Inc. v. NLRC*,[31] we held that a ship's logbook is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against employees prior to their dismissal. Therefore, the LA and the NLRC cannot be faulted for giving weight to the logbook entries.

It is trite to say that the factual findings of quasi-judicial bodies are generally binding as long as they are supported substantially by evidence in the record of the case. This is especially so where, as here, the agency and its subordinate who heard the case in the first instance are in full agreement as to the facts.[32] Dela Rosa failed to convince us that the factual findings of the LA and the NLRC are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.

In *Bolinao Security and Investigation Service, Inc. v. Toston*,[33] we held:

> It is axiomatic that factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. As long as their Decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is the Court's stamp of finality by affirming the factual findings made by the NLRC and the Labor Arbiter.

Indubitably, Dela Rosa was dismissed from employment for a just cause. Accordingly, he is not entitled to any salary for the unexpired portion of his employment contract.

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[30] G.R. No. 172031, July 14, 2008, 558 SCRA 279, 297.

[31] 245 Phil. 487, 490 (1988).

[32] *Mercidar Fishing Corporation v. NLRC*, 358 Phil. 74, 82 (1998).

[33] 466 Phil. 153, 160-161 (2004).

However, we note that Dela Rosa was not accorded due process. Under Article 277(b)[34] of the Labor Code, the employer must send the employee, who is about to be terminated, a written notice stating the causes for termination, and must give the employee the opportunity to be heard and to defend himself. For officers and crew who are working in foreign vessels involved in overseas shipping, there must be compliance with the applicable laws on overseas employment, as well as with the regulations issued by the Philippine Overseas Employment Administration, such as those embodied in the Standard Contract for Seafarers Employed Abroad (Standard Contract).[35] Section 17 of the Standard Contract supplies the disciplinary procedure against an erring seafarer:

SEC. 17. DISCIPLINARY PROCEDURES. — The Master shall comply with the following disciplinary procedures against an erring seafarer:

A. The master shall furnish the seafarer with a written notice containing the following:

1. Grounds for the charges as listed in Section 31 of this Contract or analogous act constituting the same.

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[34] ART. 277. *Miscellaneous provisions.*

x x x x x x x x x

b. Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and valid and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x.

[35] *Centennial Transmarine, Inc. v. Dela Cruz*, G.R. No. 180719, August 22, 2008, 563 SCRA 210, 222-223.

2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.

C. If after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, which copies furnished to the Philippine agent.

D. Dismissal for just cause may be affected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.

In this case, there was no showing that respondents complied with the foregoing procedure. The only notice allegedly given to Dela Rosa was a *letter warning*[36] dated March 16, 2003. Such letter, however, did not cite the particular acts constituting Dela Rosa's alleged poor performance. Likewise, there was no formal investigation of the charges. Certainly, respondents failed to observe the necessary procedural safeguards.

In *Agabon v. NLRC*,[37] we ruled that if the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. The violation of petitioner's right to due process only warrants the payment of indemnity in the form of nominal damages, the amount of which is addressed to the sound discretion of the Court, taking into consideration the relevant circumstances. Accordingly, we deem the amount of ₱30,000.00 as nominal damages sufficient vindication of Dela Rosa's right to due process under the circumstances of this case.

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[36] Annexes "B" to "B-1"; records, pp. 46-47.

[37] 485 Phil. 248, 285 (2004).

WHEREFORE, the petition is *DENIED*. Romulo B. dela Rosa is declared validly dismissed. However, respondent Michaelmar Shipping Services, Inc. and substitute respondent OSG Shipmanagement Manila, Inc. are ordered to pay, jointly and severally, petitioner Romulo dela Rosa ₱30,000.00, as nominal damages, for noncompliance with statutory due process.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183569. April 13, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICENTE PUBLICO *y* AMODIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ALTHOUGH THE ACCUSED IN A RAPE CASE MAY BE CONVICTED SOLELY ON THE TESTIMONY OF THE COMPLAINING WITNESS, COURTS ARE DUTY-BOUND TO ESTABLISH THAT THEIR RELIANCE ON THE VICTIM'S TESTIMONY IS JUSTIFIED. — In deciding rape cases, this Court is well aware of its duty to both the victim and the accused. Bearing in mind that the conviction of the accused depends heavily on the credibility of the victim, courts are mandated to thoroughly examine the testimony of the offended party. Although the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are duty-bound to establish that their reliance on the victim's testimony is justified. Courts are mandated to ensure that the testimony is credible, convincing,

and otherwise consistent with human nature. If the testimony of the complainant meets the test of credibility, the accused may be convicted on the basis thereof

2. ID.; ID.; ID.; AS A GENERAL RULE, APPELLATE COURTS WILL NOT DISTURB THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON. — As a general rule, appellate courts will not disturb the findings of the trial court on the credibility of witnesses. As we have held many times, "evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination." Unless trial courts are found to have plainly overlooked certain facts of substance and value, their conclusions on the credibility of witnesses should be respected. In the case at bar, we see no reason to deviate from this rule or to disturb the findings of the trial court.

3. ID.; ID.; ID.; TESTIMONIES OF RAPE VICTIMS WHO ARE YOUNG AND OF TENDER AGE ARE CREDIBLE. — After a thorough examination of the testimonies of complainants BBB and AAA, it is clear to this Court that the testimonies are spontaneous, clear, candid, and free from serious contradictions. This Court maintains that testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence.

4. ID.; ID.; ID.; A RAPE VICTIM'S TESTIMONY IS ENTITLED TO GREATER WEIGHT WHEN SHE ACCUSES A CLOSE RELATIVE OF HAVING RAPED HER. — [W]e have held that a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, to wit: Indeed, a young girl would not ordinarily file a complaint against anybody, much less her own father, if it were not true. Thus, the victim's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out details on an assault to her dignity cannot be dismissed as mere concoction. We also take judicial notice, and it can be considered of public knowledge, that the scene of the rape is not always or necessarily isolated or secluded. Lust is no respecter of time or place. It goes against human experience

that a girl would fabricate a story which would drag herself as well as her family to a lifetime of dishonor, unless that is the truth, for her natural instinct is to protect her honor. More so, where her charges could mean the death of her own father, as in this case. Undoubtedly, the accused-appellant was correctly found guilty of raping his daughter.

5. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; IN A RAPE COMMITTED BY A FATHER AGAINST HER OWN DAUGHTER, HIS MORAL ASCENDANCY OVER HER SUBSTITUTES FOR THE VIOLENCE AND INTIMIDATION; CASE AT BAR. — It is settled that in a rape committed by a father against his own daughter, his moral ascendancy over her substitutes for the violence and intimidation. Even though it was customary for BBB to massage her father since she was 10 years old, it is not totally impossible or contrary to human experience to believe that when she was already 16 and her father decided to rape her, he had to use force by dragging her into the bedroom in order to achieve his purpose.

6. ID.; ID.; ID.; FORCE AND INTIMIDATION; ESTABLISHED IN CASE AT BAR. — The act of poking a knife at a woman is sufficient to render her powerless, leaving her with the impossible choice of either allowing the accused to use her to satisfy his lust or to resist the desires of the accused at the risk of her own life. It has been held that the mere display of a knife is sufficient to bring a woman to submission. In testifying that accused-appellant used weapons in order for complainants to submit to his desire, the latter sufficiently established that he had used force and intimidation in committing the offenses charged.

7. REMEDIAL LAW; EVIDENCE; PRESENTATION OF THE WEAPON SUPPOSEDLY USED BY THE ACCUSED TO COMMIT RAPE IS NOT NECESSARY FOR CONVICTION. — Accused-appellant also makes an issue of the fact that the prosecution failed to present as evidence the sharp weapon or weapons supposedly used by him to force his children to have sexual intercourse with him. This Court has already ruled that the presentation of the weapon supposedly used by the accused to commit rape is not necessary for conviction, to wit: The defense further complains that the alleged knife, and the dress and panty of complainant, were not presented in evidence. The non-presentation of the knife, however, does

not negate the existence of intimidation. As We stated in another prosecution for rape where a bolo was used by therein accused to intimidate his victim, "(c)onsidering that the bolo was in the hands of appellant and presumably belonged to him, it should not be a cause for wonder why complainant could not present it in evidence. It was not likely that appellant would just leave it at the scene of the crime."

8. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; FAILURE OF THE VICTIM TO IMMEDIATELY REPORT THE RAPE IS NOT AN INDICATION OF A FABRICATED CHARGE AND DOES NOT DETRACT FROM THE FACT THAT RAPE WAS COMMITTED. — Accused-appellant also asserts that BBB's failure to promptly report to the authorities what her father did to her, thus allowing herself to be sexually abused for three years, is contrary to human experience and thus casts doubt on her credibility. We have ruled that the failure of the victim to immediately report the rape is not an indication of a fabricated charge and does not detract from the fact that rape was committed. BBB's failure to report the rape incident earlier has been fully and satisfactorily explained. She testified that she never revealed the sexual abuses committed by her father, as he had threatened that he would kill all of them should she divulge the matter to her mother. The fear of BBB that her father would kill her and the other members of her family, should she report the incident to her mother or the police, is not so unbelievable nor is it contrary to human experience.

9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL AND ALIBI; INHERENTLY WEAK AND MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE IN ORDER TO BE BELIEVED. — Denial and alibi are the most common defenses used in rape cases. We have always held that these are inherently weak and must be supported by clear and convincing evidence in order to be believed.

10. ID.; ID.; ID.; ID.; BEING NEGATIVE DEFENSES, DENIAL AND ALIBI CANNOT PREVAIL OVER POSITIVE TESTIMONIES. — [B]eing negative defenses, denial and alibi cannot prevail over the positive testimonies of the complainants. Between the positive and categorical testimony of the rape victim on one hand and the accused's bare denial on the other, the former generally prevails.

11. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; ATTEMPTED RAPE; ESTABLISHED IN CASE AT BAR. — [A]ccused-appellant relies heavily on Dr. Regino Mercado's Medical Certificate, which states that no hymenal laceration was found on AAA. According to accused-appellant, the negative findings in the Medical Certificate only show or indicate that the accused did not attempt to insert his penis into the vagina of AAA. This argument of the accused is wrong and does not exculpate him from the charge of attempted rape. Had there been a hymenal laceration, it would no longer be merely an attempted rape. It would already be indicative that the crime of rape was indeed consummated. As held in *People v. Collado*: In other words, "touching" of the female organ will result in consummated rape if the penis slid into or touched either labia of the pudendum. Anything short of that will only result in either attempted rape or acts of lasciviousness. Significantly, *People v. Campuhan* did not set a demarcation line separating attempted rape from acts of lasciviousness. The difference lies in the intent of the perpetrator deducible from his external acts. Thus when the "touching" of the vagina by the penis is coupled with the intent to penetrate, attempted rape is committed. Otherwise, it is merely acts of lasciviousness. After examining the evidence, as well as the testimonies of complainants and the prosecution's witnesses, this Court is strongly convinced that accused-appellant is guilty as charged. Based on AAA's testimony, the intent of the accused was to commit the crime of rape, but its commission was prevented due to the physical difficulty he encountered.

12. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; QUALIFYING CIRCUMSTANCES; IN THE CRIME OF RAPE, MINORITY MUST NOT ONLY BE ALLEGED IN THE INFORMATION BUT MUST ALSO BE ESTABLISHED WITH MORAL CERTAINTY; CASE AT BAR. — This Court has held that for minority to be considered as a qualifying circumstance in the crime of rape, minority must not only be alleged in the Information, but must also be established with moral certainty. We note that while the Information alleged that BBB was only 16 years old at the time she was first raped, no other evidence, documentary or otherwise — except for BBB's testimony — was presented to prove her minority at the time of the commission of the offense.

The same is true for AAA. Thus, the prosecution failed to discharge the burden of proving the minority of AAA and BBB.

13. ID.; CRIMES AGAINST PERSONS; RAPE; SIMPLE RAPE; USE OF DEADLY WEAPON MUST BE ALLEGED IN THE INFORMATION AND PROVED AT TRIAL TO BE APPRECIATED AS A QUALIFYING CIRCUMSTANCE IN RAPE; NOT COMPLIED WITH IN CASE AT BAR; PENALTY. — In Criminal Case No. 5522-0, the alleged crime was committed in June 1996, or before the effectivity of Republic Act No. (R.A.) 8353, otherwise known as "The Anti-Rape Law of 1997." Under Article 335 of the Revised Penal Code (RPC), as amended by R.A. 7659, which is applicable in this case, whenever a crime of rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. In the case at bar, the use of a deadly weapon, although alleged in the Complaint and proved at the trial, was not alleged in the Information as required by Section 8 of Rule 110 of the Revised Rules of Criminal Procedure. Thus, the use of a deadly weapon by accused-appellant cannot be appreciated as a qualifying circumstance without violating his right to be informed of the charges against him. Consequently, accused-appellant may only be held liable for simple rape. The penalty for simple rape is *reclusion perpetua*.

14. ID.; ID.; ID.; ATTEMPTED RAPE; PENALTY IN CASE AT BAR. — Article 51 of the Revised Penal Code is applicable to Criminal Case No. 5521-0, which is a case for attempted rape. The aforementioned article imposes a penalty two degrees lower than that prescribed for the consummated felony. The use of deadly weapons was not alleged in the Information and thus cannot aggravate the penalty pursuant to Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, and is hereby made to retroact to benefit the accused as required by well-established constitutional and criminal law doctrines. Since the crime of rape was merely attempted, the imposable penalty is two degrees lower than the prescribed penalty, which is *prision mayor*, the range of which is six (6) years and one (1) day to twelve (12) years. One degree below *prision mayor* is *prision correccional*. Applying the Indeterminate Sentence Law generously, the minimum penalty to be imposed shall be within the medium period. Thus, the minimum sentence imposed is four years.

15. CIVIL LAW; DAMAGES; AWARDED IN CASE AT BAR. — The damages to be awarded for simple rape are (a) PhP50,000 as civil indemnity; (b) PhP50,000 as moral damages; and (c) PhP30,000 as exemplary damages. For attempted rape, the proper amount of damages are (a) PhP30,000 as civil indemnity; (b) PhP25,000 as moral damages; and (c) PhP10,000 as exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *J.:*

This is a review of the Decision of the Court of Appeals (CA), Cebu City, in CA-G.R. CEB-CR.-H.C. No. 00290,[1] which affirmed the Judgment of the Regional Trial Court (RTC) of Ormoc City, Branch 35, in Criminal Case Nos. 5521-0 and 5522-0[2] finding accused-appellant Vicente Publico *y* Amodia guilty beyond reasonable doubt of rape and attempted rape.

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

Criminal Case No. 5521-0

On the evening of 21 February 1999, AAA, the twelve-year-old daughter of accused-appellant, was in their house. After AAA put her younger sister to sleep, she heard her father call for her saying, "*Day*, come here." She approached her father and saw that he was holding a bolo. He ordered AAA to take off her panty. She refused to take it off, so accused-appellant removed it himself. He then mounted AAA and attempted to insert his penis into her vagina. The physiological state of AAA

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[1] Penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier.

[2] Penned by Judge Fortunito L. Madrona.

made full penetration impossible—she was only a twelve-year-old virgin and her vagina was still too tight; the mere attempt to have sexual intercourse with her caused her immense pain. Frustrated and enraged, accused-appellant started hurling tirades at her. Soon thereafter one of their neighbors, Iking Carmones, knocked on their door. Accused-appellant opened the door and left the house with the former.

The following day AAA, together with her elder brother CCC, reported the matter to the police.

An Information charging accused-appellant with attempted rape was filed. Its accusatory portion reads:

> That on or about the 21st day of February, 1999 at around 11:00 o'clock in the evening, at XXX, *barangay* XXX, XXX City and within the jurisdiction of this Honorable Court, the above-named accused: VICENTE PUBLICO *y* AMODIA, did then and there willfully, unlawfully, feloniously attempt to have carnal knowledge of his legitimate 12 year old daughter — AAA, by trying to insert his organ into the female organ of AAA but failed, thereby commencing the commission of the crime of rape directly by overt acts, and that, if said accused did not accomplish his unlawful purpose, it was not because of his own voluntary desistance but because the female organ of AAA was still too tight, she being a virgin.
>
> In violation of Art. 335 in relation to Art. 6, Revised Penal Code.

Criminal Case No. 5522-0

BBB, also a daughter of accused-appellant, is the older sister of AAA.

When BBB reached the age of ten, she started giving her father massages. Accused-appellant would get angry if it was not BBB who would massage him. He would only be in his underwear whenever she massaged him.

At the age of fifteen, BBB started having sexual intercourse with a boyfriend, with whom she lived without the benefit of marriage. In May 1996, she started having sexual intercourse with him in the same room where her parents and sister also slept. Roughly two weeks after BBB and her lover started living

together, the two had a quarrel. Accused-appellant took his daughter's side and mauled her lover, who then left their house and never returned.

Sometime in June 1996, at around three o'clock in the afternoon, while her mother and her brothers were out working and her younger sister AAA was in school, BBB was sent by her father to buy kerosene to be used for his massage. When she arrived at their house, accused-appellant suddenly dragged her inside the room. He then poked a sharp weapon at BBB and took her shorts off. After removing her shorts, he removed his briefs and had sexual intercourse with her. BBB claims that after that fateful day in June 1996, accused-appellant raped her several more times for a period of two years or until she reached the age of eighteen. According to BBB whenever she tried to resist her father's attempts to have sexual intercourse with her, he would maul her until she was left with no other choice but to yield to his desires. She never revealed the sexual abuses committed by accused-appellant, because he threatened to kill her and their entire family should she divulge the matter to her mother.

Eventually, accused-appellant got BBB pregnant. She gave birth to their child in June 1997.

In November 1998, BBB left home and moved to Cebu City. Sometime after leaving their house, she received a visit from her older brother, CCC. Her brother informed her that accused-appellant had also tried to rape their younger sister, AAA.

This information prompted BBB to file a Complaint for rape against accused-appellant on 24 February 1999. The Complaint charged appellant with rape allegedly committed as follows:

> That on or about the month of June 1996, and for sometime subsequent thereto, at XXX, *barangay* XXX, XXX City, and within the jurisdiction of this Honorable Court, the above-named accused: VICENTE PUBLICO *y* Amodia, by means of violence and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of his legitimate daughter — BBB, a sixteen (16) year old lass, against her will.

In violation of Article 355, Revised Penal Code, as amended by RA 7659.

Criminal Cases Nos. 5521-0 and 5522-0 were consolidated.

Upon arraignment on 25 March 1999, accused-appellant entered a plea of not guilty.

During trial, the prosecution presented 19-year-old BBB and 13-year-old AAA as witnesses. BBB testified as to how her father raped her the first time and several times thereafter for a period of two years,[3] while AAA recounted the events that transpired on the day her father attempted to rape her.[4]

BBB's testimony was supported by the testimony of Dr. Regino Mercado, who identified the Medical Certificate[5] he issued on 23 February 1999 after his physical examination of BBB. Dr. Mercado found: "1. Old hymenal lacerated wound at 3 o'clock, 6 o'clock and 9 o'clock based on the face of the clock."

The physical examination conducted by Dr. Mercado on AAA[6] did not show any hymenal laceration.

Senior Police Officer 1 (SPO1) Nestor Sicsic further strengthened the prosecution's case through his testimony about Entry No. 7698[7] in the police blotter of Police Precinct No. 2 at XXX, XXX City. The police blotter showed that BBB lodged a Complaint for rape against her own father. SPO1 Sicsic also corroborated AAA's story through his testimony identifying Entry Nos. 7683, 7685, and 7686[8] in the police blotter of Police Precinct No. 2 at XXX, XXX City. These entries proved that AAA reported to the police her father's attempt to rape her on 22 February 1999.

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[3] TSN, 23 June 1999, at 8-11.

[4] TSN, 23 June 1999, at 10-13.

[5] Exhibit "D"; TSN, 8 September 1999, at 11.

[6] Exhibit "E"; TSN, 8 September 1999, at 15.

[7] Exhibit "B"; TSN, 17 August 1999, at 6-7.

[8] Exhibit "C"; TSN, 17 August 1999, at 7.

AAA's older brother, CCC, testified that on 22 February 1999, when he arrived from work at around 7:30 a.m., his younger sister AAA came to his house crying. She then told her brother that their father had attempted to rape her. He then accompanied his sister to the police at Barangay Valencia to report the incident.[9]

The sole witness for the defense was accused-appellant himself. He denied the accusations of his daughters against him and presented alibis as main defenses.

Accused-appellant claimed that on 4 June 1996 he left for Manila to look for a job. He said that he worked as a laborer digging canals for the skyway construction project in Western Bicutan, Taguig. He further said that he returned to XXX City only in October for All Saints' Day.[10]

Accused-appellant also claimed that on 21 February 1999, he was at home drinking Tanduay Rhum with his *compadre* Dionisio Cadenes. They were allegedly drinking from 3:00 p.m. to 8:00 p.m. When his *compadre* left, he went to sleep. At around three o'clock in the morning, accused-appellant woke up. He tried to wake AAA up to make her boil some water, so that he could have coffee. She did not comply, so he himself went into the kitchen to boil some water.[11]

On 13 July 2007, the trial court, giving credence to the evidence of the prosecution, convicted accused-appellant and meted out to him the penalty of death, *viz*:

WHEREFORE, after duly considering all the foregoing, the Court finds the accused Vicente Publico *y* Amodia GUILTY beyond reasonable doubt of the crime of Rape as charged in Criminal Case No. 5522-0 and of the crime of Attempted Rape as charged in Criminal Case No. 5521-0, and accordingly hereby sentences the said accused under Criminal Case No. 5522-0 to the supreme penalty of Death, whereas under Criminal Case No. 5521-0, the Court penalizes the accused to an indeterminate sentence of 6 years and 1 day *prision*

[9] TSN, 17 August 1999, at 19.

[10] TSN, 25 October 1999, at 5-7.

[11] TSN, 25 October 1999, at 8-12.

mayor as minimum to 12 years and 1 day *reclusion temporal* as maximum, and in both cases to pay the offended party as follows: ₱50,000.00 as indemnity and ₱50,000.00 as moral damages, in Criminal Case No. 5522-0; ₱50,000.00 as moral damages in Criminal Case No. 5521-0.

For Criminal Case No. 5521-0, if the accused is a detainee, the period of his detention shall be credited to him in full if he abides in writing by the terms for convicted prisoners, otherwise, for only 4/5 thereof.

SO ORDERED.

The case was elevated to the Court of Appeals on automatic review. On 9 January 2008, the appellate court promulgated its Decision affirming the Decision of trial court, but with the following modifications:

1. In Criminal Case No. 5522-0, appellant is found guilty of Simple Rape and sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay private complainant BBB ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

2. In criminal Case No. 5521-0, appellant is found guilty of Attempted Rape and is sentenced to an indeterminate prison term of five (5) years, four (4) months and twenty-one (21) days of *prision coreccional* as minimum, to eleven (11) years, four (4) months and one (1) day of *prision mayor* as maximum. He is also ordered to pay private complainant AAA ₱30,000.00 as civil liability, plus ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages

Costs against appellant

SO ORDERED.

Accused-appellant is now before us, seeking the reversal of the judgment of the court below, raising this sole assignment of error:

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF BBB AND AAA.

The appeal is bereft of merit.

In deciding rape cases, this Court is well aware of its duty to both the victim and the accused. Bearing in mind that the conviction of the accused depends heavily on the credibility of the victim, courts are mandated to thoroughly examine the testimony of the offended party.[12] Although the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are duty-bound to establish that their reliance on the victim's testimony is justified. Courts are mandated to ensure that the testimony is credible, convincing, and otherwise consistent with human nature.[13] If the testimony of the complainant meets the test of credibility, the accused may be convicted on the basis thereof.

As a general rule, appellate courts will not disturb the findings of the trial court on the credibility of witnesses. As we have held many times, "evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination."[14] Unless trial courts are found to have plainly overlooked certain facts of substance and value, their conclusions on the credibility of witnesses should be respected.[15]

In the case at bar, we see no reason to deviate from this rule or to disturb the findings of the trial court.

After a thorough examination of the testimonies of complainants BBB and AAA, it is clear to this Court that the testimonies are spontaneous, clear, candid, and free from serious contradictions. This Court maintains that testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence.[16]

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[12] *People v. Perez*, G.R. No. 118332, March 26, 1997, 270 SCRA 526.

[13] *People v. Gabayron*, G.R. No. 102018, August 21, 1997, 278 SCRA 78.

[14] *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903.

[15] *People v. Padre-e*, G.R. No. 112969, October 24, 1995, 249 SCRA 422.

[16] *People v. Gagto*, G.R. No. 113345, February 9, 1996, 253 SCRA 455.

Furthermore, we have held that a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, to wit:

> Indeed, a young girl would not ordinarily file a complaint against anybody, much less her own father, if it were not true. Thus, the victim's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out details on an assault to her dignity cannot be dismissed as mere concoction. We also take judicial notice, and it can be considered of public knowledge, that the scene of the rape is not always or necessarily isolated or secluded. Lust is no respecter of time or place. It goes against human experience that a girl would fabricate a story which would drag herself as well as her family to a lifetime of dishonor, unless that is the truth, for her natural instinct is to protect her honor. More so, where her charges could mean the death of her own father, as in this case. Undoubtedly, the accused-appellant was correctly found guilty of raping his daughter.[17]

In his Appellant's Brief,[18] accused-appellant argues that the testimonies of BBB and AAA should not have been given credence for being incredible and contrary to human experience. Specifically, he claims that it was impossible for him to have dragged BBB into the bedroom. He points out that BBB herself testified that she had been massaging her father since she was 10; thus, there was no need for him use force just to get her to massage him.[19]

The Solicitor General's rebuttal of this argument is correct. It is settled that in a rape committed by a father against his own daughter, his moral ascendancy over her substitutes for the violence and intimidation.[20] Even though it was customary

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[17] *People v. Daganio,* 425 Phil. 186 (2002).

[18] On 6 November 2008, this Court received accused-appellant's Manifestation in Lieu of Supplemental Brief wherein the accused-appellant states that he is submitting his Appellant's Brief as his Supplemental Brief.

[19] *Rollo* at 48-49.

[20] *People v. Nava, Jr.*, G.R. Nos. 130509-12, June 19, 2000, 333 SCRA 749.

for BBB to massage her father since she was 10 years old, it is not totally impossible or contrary to human experience to believe that when she was already 16 and her father decided to rape her, he had to use force by dragging her into the bedroom in order to achieve his purpose.

Accused-appellant contends that the testimony of BBB that she did not resist because she was afraid that her father might stab her with the sharp weapon with which he poked her should not be given weight, since it is "to [sic] presumptuous or imaginary considering there is yet not [sic] testimony on her part that accused had attempted to stab her."[21] This Court cannot fathom why it should require rape victims to establish that the accused attempted to stab them before the accused can be convicted of the crime of rape. The poking with a sharp weapon to coerce BBB into submission already establishes force and/or intimidation as contemplated by the Revised Penal Code.

The act of poking a knife at a woman is sufficient to render her powerless, leaving her with the impossible choice of either allowing the accused to use her to satisfy his lust or to resist the desires of the accused at the risk of her own life. It has been held that the mere display of a knife is sufficient to bring a woman to submission.[22] In testifying that accused-appellant used weapons in order for complainants to submit to his desire, the latter sufficiently established that he had used force and intimidation in committing the offenses charged.

Accused-appellant also makes an issue of the fact that the prosecution failed to present as evidence the sharp weapon or weapons supposedly used by him to force his children to have sexual intercourse with him.[23] This Court has already ruled that the presentation of the weapon supposedly used by the accused to commit rape is not necessary for conviction, to wit:

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[21] *Rollo* at 50.

[22] *People v. Tolentino*, G.R. No. 139834, February 19, 2001 352 SCRA 228 citing *People v. Rabang, Jr.*, G.R. No. 105374, September 29, 1999, 315 SCRA 451.

[23] *Rollo* at 50.

The defense further complains that the alleged knife, and the dress and panty of complainant, were not presented in evidence. The non-presentation of the knife, however, does not negate the existence of intimidation. As We stated in another prosecution for rape where a bolo was used by therein accused to intimidate his victim, "(c)onsidering that the bolo was in the hands of appellant and presumably belonged to him, it should not be a cause for wonder why complainant could not present it in evidence. It was not likely that appellant would just leave it at the scene of the crime." Likewise, the non-presentation of the torn and blood-stained dress and underwear of complainant does not destroy the case for the prosecution, there being sufficient and convincing evidence to prove the rape charges beyond reasonable doubt.[24]

Accused-appellant also asserts that BBB's failure to promptly report to the authorities what her father did to her, thus allowing herself to be sexually abused for three years, is contrary to human experience and thus casts doubt on her credibility.[25] We have ruled that the failure of the victim to immediately report the rape is not an indication of a fabricated charge and does not detract from the fact that rape was committed.[26] BBB's failure to report the rape incident earlier has been fully and satisfactorily explained. She testified that she never revealed the sexual abuses committed by her father, as he had threatened that he would kill all of them should she divulge the matter to her mother. The fear of BBB that her father would kill her and the other members of her family, should she report the incident to her mother or the police, is not so unbelievable nor is it contrary to human experience. In *People v. Casil*[27] this Court ruled:

The threats of appellant to kill her and all members of her family should she report the incidents to anyone were etched in her gullible mind and sufficed to intimidate her into silence. Add to this the fact that she was living with appellant during the entire period of

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[24] *People v. Garcia*, G.R. Nos. L-45280-81, June 11, 1981, 105 SCRA 6.

[25] *Rollo* at 50-51.

[26] *People v. Casil*, G.R. No. 105834, February 13, 1995, 241 SCRA 285.

[27] *Id*.

her tribulation, with her mother often away working for a living, and one can readily visualize the helplessness of her plight.

Against all the evidence presented by the prosecution, accused-appellant presents nothing but denials and alibis as his defense. Denial and alibi are the most common defenses used in rape cases. We have always held that these are inherently weak and must be supported by clear and convincing evidence in order to be believed.[28] Thus,

> An alibi may be considered with favor only when established by positive, clear and satisfactory evidence. Significantly, where no one corroborates the alibi of an accused, such defense becomes all the weaker for this deficiency. Neither can plain denial, a negative and self-serving evidence stand against the positive identification and categorical testimony made by a victim of rape. A mere denial is seldom given greater evidentiary value than the testimony of a witness who creditably testifies on affirmative matters. All told, the proffered alibi of accused-appellant can not stand against the positive identification by the private complainant that he is the culprit. Basic is the rule that alibi which is easy to concoct can not prevail over the positive identification; what is more, appellant utterly failed to prove that it was physically impossible for him to be at the scene of the crime at the approximate time of its commission. Consequently, accused-appellant's defense of alibi can not prosper. Indeed, the revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint. Stated differently, it is most improbable for a five-year old girl of tender years, so innocent and so guileless as the herein offended party, to brazenly impute a crime so serious as rape to any man if it were not true.[29]

As to the defense that, on 21 February 1999, he could not have committed the attempted rape as he was at home drinking

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[28] *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509.

[29] *People v. Marquez*, G.R. Nos. 137408-10, December 8, 2000, 347 SCRA 510.

Tanduay Rhum with his *compadre*, accused-appellant failed to prove and demonstrate the physical impossibility of his being at the scene of the crime at the approximate time of its commission.

In addition, aside from his self-serving testimony, no other evidence or witness was presented by accused-appellant to corroborate his testimony that he was working as a laborer in Manila from June 1996 to October 1996, or that on 21 February 1999 he was having a drinking session with his *compadre*. Consequently, accused-appellant's defenses cannot be given credence and must therefore fail.

Moreover, being negative defenses, denial and alibi cannot prevail over the positive testimonies of the complainants. Between the positive and categorical testimony of the rape victim on one hand and the accused's bare denial on the other, the former generally prevails.[30]

Lastly, accused-appellant relies heavily on Dr. Regino Mercado's Medical Certificate, which states that no hymenal laceration was found on AAA. According to accused-appellant, the negative findings in the Medical Certificate only show or indicate that the accused did not attempt to insert his penis into the vagina of AAA.[31]

This argument of the accused is wrong and does not exculpate him from the charge of attempted rape. Had there been a hymenal laceration, it would no longer be merely an attempted rape. It would already be indicative that the crime of rape was indeed consummated. As held in *People v. Collado*:[32]

> In other words, "touching" of the female organ will result in consummated rape if the penis slid into or touched either labia of the pudendum. Anything short of that will only result in either attempted rape or acts of lasciviousness. Significantly, *People v. Campuhan* did not set a demarcation line separating attempted rape

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[30] *People v. Cambi*, G.R. No. 127131, June 8, 2000, 333 SCRA 305.

[31] *Rollo* at 55-56.

[32] G.R. Nos. 135667-70.

from acts of lasciviousness. The difference lies in the intent of the perpetrator deducible from his external acts. Thus when the "touching" of the vagina by the penis is coupled with the intent to penetrate, attempted rape is committed. Otherwise, it is merely acts of lasciviousness.

After examining the evidence, as well as the testimonies of complainants and the prosecution's witnesses, this Court is strongly convinced that accused-appellant is guilty as charged. Based on AAA's testimony, the intent of the accused was to commit the crime of rape, but its commission was prevented due to the physical difficulty he encountered.

Accused-appellant insists that the qualifying circumstances that the victims were minors or persons under eighteen years old and that the offender was the victims' father were not alleged in the Information.[33] Consequently, accused-appellant cannot be convicted of qualified rape; and neither can the death penalty be imposed upon him without violating his constitutional right to be informed of the nature and the cause of the accusation against him. This, of course, is not true. A plain reading of the two Informations filed against accused-appellant will reveal that the ages of the victims and the fact that accused-appellant is their father have been alleged in the Informations. The Information in Criminal Case No. 5521-0 states that accused-appellant attempted "to have carnal knowledge of his legitimate 12 year old daughter," while the Information in Criminal Case No. 5522-0 states that accused appellant had "carnal knowledge of his legitimate daughter — BBB, a sixteen (16) year old lass."

This Court has held that for minority to be considered as a qualifying circumstance in the crime of rape, minority must not only be alleged in the Information, but must also be established with moral certainty. We note that while the Information alleged that BBB was only 16 years old at the time she was first raped, no other evidence, documentary or otherwise—except for BBB's testimony—was presented to prove her minority at the time of the commission of the offense. The same is true for AAA. Thus,

[33] *Rollo* at 54.

the prosecution failed to discharge the burden of proving the minority of AAA and BBB. In *People v. Javier*,[34] this Court ruled:

> ...[I]t is significant to note that the prosecution failed to present the birth certificate of the complainant. Although the victim's age was not contested by the defense, proof of age of the victim is particularly necessary in this case considering that the victim's age which was then 16 years old is just two years less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young looking 18-year old lady may pass as a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659.
>
> We hold that the qualifying circumstance of minority under Republic Act No. 7659 cannot be appreciated in these cases.

In Criminal Case No. 5522-0, the alleged crime was committed in June 1996, or before the effectivity of Republic Act No. (R.A.) 8353, otherwise known as "The Anti-Rape Law of 1997." Under Article 335 of the Revised Penal Code (RPC), as amended by R.A. 7659, which is applicable in this case, whenever a crime of rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death.[35] In the case at bar, the use of a deadly weapon, although alleged in the Complaint and proved at the trial, was not alleged in the Information as required by Section 8 of Rule 110 of the Revised Rules of Criminal Procedure. Thus, the use of a deadly weapon by accused-appellant cannot be appreciated as a qualifying circumstance without violating his right to be informed of the charges against him.[36]

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[34] G.R. No. 126096, July 26, 1999, 311 SCRA 122.

[35] *People v. Cula*, G.R. No. 133146, March 28, 2000, 329 SCRA 101.

[36] *People v. Mendoza*, G.R. Nos. 132923-24, June 6, 2002 citing *People v. De la Cuesta*, 304 SCRA 83, 92 (1999).

Consequently, accused-appellant may only be held liable for simple rape. The penalty for simple rape is *reclusion perpetua.*

The alleged crime in Criminal Case No. 5521-0 was committed on 29 February 1999. The law applicable to the said case is R.A. 8353, which took effect on October 22, 1997. Articles 266-A and 266-B of this law read:

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:

a) Through force, threat, or intimidation;

x x x x x x x x x

Article 266-B. Penalty. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

l) 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

5) When the victim is a child below seven (7) years old.

Article 51 of the Revised Penal Code is applicable to Criminal Case No. 5521-0, which is a case for attempted rape. The aforementioned article imposes a penalty two degrees lower than that prescribed for the consummated felony. The use of deadly weapons was not alleged in the Information and thus cannot

aggravate the penalty pursuant to Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, and is hereby made to retroact to benefit the accused as required by well-established constitutional and criminal law doctrines. Since the crime of rape was merely attempted, the imposable penalty is two degrees lower than the prescribed penalty, which is *prision mayor*, the range of which is six (6) years and one (1) day to twelve (12) years. One degree below *prision mayor* is *prision correccional.* Applying the Indeterminate Sentence Law generously, the minimum penalty to be imposed shall be within the medium period. Thus, the minimum sentence imposed is four years.

The damages to be awarded for simple rape are (a) PhP50,000 as civil indemnity; (b) PhP50,000 as moral damages; and (c) PhP30,000 as exemplary damages.[37] For attempted rape, the proper amount of damages are (a) PhP30,000 as civil indemnity; (b) PhP25,000 as moral damages; and (c) PhP10,000 as exemplary damages.[38]

WHEREFORE, the judgment appealed from is hereby *AFFIRMED* with the following *MODIFICATIONS:*

Accused-appellant Vicente Publico *y* Amodia is sentenced to suffer:

1. The penalty of *reclusion perpetua* for Criminal Case No. 5522-0;
2. The indeterminate penalty of 4 years as minimum to 10 years of *prision mayor* as maximum for Criminal Case No. 5521-0.

He is also ordered to pay:

1. Fifty thousand pesos (PhP50,000) as civil indemnity for Criminal Case No. 5522-0 and thirty thousand pesos

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[37] *People v. Rata,* G.R. Nos. 145523-24, December 11, 2003, 418 SCRA 237; *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168.

[38] *People v. Brioso*, G.R. No. 182517, March 13, 2009, 581 SCRA 485; citing *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168.

(PhP30,000) as civil indemnity for Criminal Case No. 5521-0;

2. Fifty thousand pesos (PhP50,000) as moral damages for Criminal Case No. 5522-0 and twenty five thousand pesos (PhP25,000) as moral damages for Criminal Case No. 5521-0.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183890. April 13, 2011]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **MANUEL P. VALENCIA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; NOT DEPRIVED IN CASE AT BAR. — On due process, the Court agrees with the Ombudsman that Valencia was not deprived of his constitutional right thereto. x x x [W]hen the statement of wealth becomes manifestly disproportionate to an employee's income or other sources of income and he fails to properly account or explain his other sources of income, he becomes liable for Dishonesty. This is especially true considering that when a public officers takes an oath or office, he binds himself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, a public officer in the discharge of duties, is to use that prudence, caution and attention which careful persons use in the management of his affairs. Consequently, an accused

charged with Unexplained Wealth cannot claim to have been denied due process should he be held administratively liable for Dishonesty.

2. ID.; REPUBLIC ACT 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); STATEMENT OF ASSETS AND LIABILITIES; RATIONALE. — In the case of *Carabeo v. Court of Appeals, citing Ombudsman v. Valeroso*, the Court restated the rationale for the SALN and the evils that it seeks to thwart, to wit: Section 8 above, speaks of *unlawful acquisition* of wealth, the evil sought to be suppressed and avoided, and Section 7, which mandates full disclosure of wealth in the SALN, is a means of preventing said evil and is aimed particularly at curtailing and minimizing, the opportunities for official corruption and maintaining a standard of honesty in the public service. **"Unexplained" matter normally results from "non-disclosure" or concealment of vital facts.** SALN, which all public officials and employees are mandated to file, are the means to achieve the policy of accountability of all public officers and employees in the government. By the SALN, the public are able to monitor movement in the fortune of a public official; it is a valid check and balance mechanism to verify undisclosed properties and wealth.

3. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; ELUCIDATED; PENALTY. — Dishonesty is incurred when an individual intentionally makes a false statement of any material fact, practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply 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; the disposition to defraud, deceive or betray. It is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee. Like the offense of Unexplained Wealth, Section 52 (A)(1), Rule IV of the Revised Uniform Rules on Administrative Cases in Civil Service treats Dishonesty as a grave offense, the penalty of which is dismissal from the service at the first infraction.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; WHAT DETERMINES THE REAL

NATURE AND CAUSE OF THE ACCUSATION AGAINST AN ACCUSED IS THE ACTUAL RECITAL OF FACTS STATED IN THE INFORMATION OR COMPLAINT. — It should be pointed out that the actual recital of facts of the complaint shows that the nature and cause of the accusation hurled by Guerrero includes the charge of Dishonesty. Well-settled is the rule that what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint, nor the specification of the provision of law alleged to have been violated, they being conclusions of law.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS ARE GOVERNED BY THE SUBSTANTIAL EVIDENCE RULE; SUBSTANTIAL EVIDENCE, EXPLAINED. — The Court, however, sustains the finding of the CA that there is no substantial evidence to hold Valencia liable for Dishonesty. Administrative proceedings are governed by the "substantial evidence rule." Otherwise stated, a finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.

6. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; QUESTION OF FACT IS NOT GENERALLY SUBJECT TO REVIEW BY THE SUPREME COURT; IN CASE AT BAR, A REVIEW OF FACTS IS IN ORDER. — The question of whether there is sufficient evidence to hold Valencia liable for the charges against him is one of fact, which is not generally subject to review by the Court. A review of the facts, however, is in order not only because the findings of fact of the Ombudsman and the CA were diametrically opposed, but also because the Ombudsman decision was alleged to have been grounded on speculations, surmises and conjectures.

7. ID.; EVIDENCE; ADMISSIBILITY; DUE EXECUTION OR GENUINENESS OF THE PHOTOCOPIED PRIVATE DOCUMENTS MUST FIRST BE SHOWN BEFORE THEY MAY BE CONSIDERED ADMISSIBLE IN EVIDENCE;

NOT COMPLIED WITH IN CASE AT BAR. — Indeed, in administrative proceedings, the law does not require evidence beyond reasonable doubt or preponderance of evidence. Substantial evidence is enough. This presupposes, however, that the evidence proferred is admissible under the rules. With respect to photocopied private documents, the rule is that before it can be considered admissible in evidence, its due execution or genuineness should be first shown. Failing in this, the photocopies are inadmissible in evidence; at the very least, it has no probative value. As the records bear out, the due execution and genuineness of the photocopied letters of agreement and monthly statements of the BPI Mastercard transactions of Valencia were never verified and confirmed. The basic rule is that these photocopied private documents are secondary evidence which are inadmissible unless there is ample proof of the loss of the originals. Absent such proof, these documents are incompetent as evidence. The Court cannot rightly appreciate firsthand the genuineness of an unverified and unidentified document, much less, accord it evidentiary value. Regarding the photocopied letters of agreement, these were not even signed by Valencia. Thus, these letters of agreement relating to the alleged dollar time deposits of Valencia and his credit card billings are incompetent pieces of evidence unworthy of any probative value.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Danilo O. Cunanan for respondent.

D E C I S I O N

MENDOZA, *J.*:

At bench is a petition for review assailing the April 11, 2008 Decision[1] and the July 16, 2008 Resolution[2] of the Court of

[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justice Hakim S. Abdulwahid and Associate Justice Jose C. Reyes, Jr., concurring; *rollo,* pp. 48-67.

[2] *Id.* at 68-70.

Appeals (CA) in CA-G.R. SP No. 89299, which [1] reversed and set aside the September 30, 2004 Decision[3] and January 31, 2005 Order[4] of the Office of the Ombudsman (*Ombudsman*) finding respondent Manuel P. Valencia, Jr. (*Valencia*), Chief Customs Operations Officer of the Bureau of Custom (*BOC*), guilty of Dishonesty; and [2] nullified the October 14, 2003 Order[5] of the Ombudsman that placed Valencia under preventive suspension.

From the records, it appears that Valencia declared the following assets and liabilities in his sworn Statement of Assets and Liabilities and Networth (SALN) as of December 31, 1999:[6]

I. ASSETS
a. Real Properties

Kind	Location	Year Acquired	Assessed Value	Acquisition Cost
House/Lot	Parañaque	1988	₱713,210.00	₱1,225,070
Total				**₱1,225,070**

b. Personal and other Properties

Kind	Year Acquired	Acquisition Cost
Car	1988	₱299,000.00
Jewelries	1979	₱100,000.00
Cash on Hand/In Bank		₱275,000.00
Total		**₱674,000.00**

[3] *Id.* at 83-104.

[4] Records, pp. 288-295.

[5] *Id.* at 58-62.

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

II. LIABILITIES

Nature	Amount
Loans & Mortgage	₱350,000.00
Total	**₱350,000.00**

As of December 31, 2001, Valencia declared the following assets and liabilities:

I. ASSETS
a. Real Properties

Kind	Location	Year Acquired	Assessed Value	Acquisition Cost
House/Lot	Parañaque	1988	₱713,210.00	₱1,225,070
Total				**₱1,225,070**

b. Personal and other Properties

Kind	Year Acquired	Acquisition Cost
Jewelries	Various years	₱150,000.00
Cash on Hand/In Bank		₱600,000.00
Total		**₱750,000.00**

II. LIABILITIES

Nature	Amount
Loans & Mortgage	₱250,000.00
Total	**₱250,000.00**

On July 21, 2003, not satisfied that the entries made by Valencia in his SALN were reflective of his actual net worth, Napoleon P. Guerrero (*Guerrero*), Intelligence Officer V of the Department of Finance, filed a complaint/motion for Subpoena/Subpoena *Duces Tecum*[7] with the Ombudsman against him for violation

[7] *Id.* at 1-19.

of Republic Act (*R.A.*) No. 1379[8] in relation to Section 8,[9] R.A. No. 3019.[10]

The criminal aspect of the complaint was docketed as OMB-C-C-03-0447-H, while the administrative aspect was docketed as OMB-C-A-03-0275-H.

In his complaint, Guerrero alleged that Valencia maintained two (2) US dollar time deposit accounts with the Far East Bank and Trust Company (*FEBTC*). The first account with the amount of US$2,013,248.80 was covered by Certificate No. 962460, while the second, with the amount of US$1,812,165.38, was covered by Certificate No. 962461. According to Guerrero, these huge amounts were "the actual fruits of his illegal transactions and activities of as an employee of the Bureau of Customs."[11]

In support of his allegation that Valencia maintained these accounts, Guerrero attached two (2) Letters of Agreement[12] placing the two US dollar time deposit accounts under the custody of FEBTC and authorizing said bank to apply the proceeds of the accounts to the forward contracts entered into by Valencia and FEBTC.

The complaint also alleged that the house and lot declared by Valencia in his SALNs was grossly undervalued considering

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[8] Otherwise known as the Law on Forfeiture of Unlawfully Acquired Wealth.

[9] Sec. 8. *Dismissal due to unexplained wealth*. — If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

[10] Otherwise known as the Anti-Graft and Corrupt Practices Act.

[11] Records, p. 3.

[12] *Id.* at 13-14.

that the house, described as "impressive," was erected on a parcel of land consisting of five (5) contiguous lots.[13]

Finally, it was alleged that from the credit card billings of his Bank of the Philippine Islands (*BPI*) Mastercard, it could be inferred that Valencia maintained a lavish lifestyle.

Guerrero sought issuance of a subpoena *duces tecum* against FEBTC and BPI for the production of records relative to the two U.S. dollar time deposits of Valencia and his Mastercard account, respectively.

Instead of a counter-affidavit, Valencia filed a *Motion to Set Aside Orders Both Dated September 3, 2003*[14] contending that the case was not yet ripe for preliminary investigation/ administrative adjudication, and that he should be excused from filing a counter affidavit because 1] the complaint was subscribed and sworn to before Assistant Ombudsman Ernesto M. Nocos (*Nocos*), a person not authorized to administer oaths under Section 41 of the Revised Administrative Code, as amended by R.A. No. 6733;[15] 2] the complaint lacked the certification from Nocos that he "personally examined the complaint and that he is satisfied that he voluntarily executed and understood his complaint" in violation of Section 3 (a), Rule 112 of the Rules of Court; and 3] similar charges against him, in CPL No. 99-1783, were earlier dismissed by the Ombudsman for lack of evidence.

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[13] Covered by Transfer Certificate of Title (TCT) Nos. 14704, 14705, 14706, 12695, and 12696.

[14] Records, pp. 30-31.

[15] Sec. 41. *Officers Authorized to Administer Oath*. — The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerks of courts; registrars of deeds; other civilian officers in the public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

In its Order[16] dated October 3, 2003, the Ombudsman denied Valencia's motion, citing Section 15 and Section 26 of R.A. No. 6770, otherwise known as the "Ombudsman Act of 1989." The Ombudsman added that the properties involved in CPL No. 99-1783 were different from those alleged by Guerrero to have been unlawfully acquired. Valencia was, thus, ordered to submit his counter-affidavit, those of his witnesses, as well as other supporting documents.

Answering the charges hurled against him, Valencia alleged in his Consolidated Counter-Affidavit[17] that at the time he joined the Bureau of Customs on October 1, 1982, his family had been in the textile and garment business for more than fifteen (15) years; and that because of their business, his family was able to purchase a house and lot in Dasmariñas Village, Makati City, then valued at ₱400,000.00. The house and lot was later on sold for ₱1,500,000.00. His family then transferred to B.F. Homes in Parañaque and rented a house.

Then, sometime in 1985, his family transferred again to a house and lot belonging to his aunt, Paulina Potente *(Potente)*, also in B.F. Homes, Parañaque. As his aunt preferred to live in General Trias, Cavite, he offered to lease-purchase the house to which she agreed. From 1985 to 1987, he introduced improvements to the house worth ₱600,000.00.

At the rear portion of the house of Potente, two (2) vacant lots belonging to one Rosalinda B. Silva were being offered for sale. Being adjacent to the house of his aunt, he purchased the same on August 24, 1988 for a total consideration of ₱268,950.00. Consequently, a Deed of Absolute Sale[18] was executed by the parties and Transfer Certificates of Title (*TCT*) Nos. 12695 and 12696 were eventually issued in his name.

After fully paying the three (3) lots owned by his aunt, he obtained a Deed of Absolute Sale[19] dated September 26, 1988

[16] Records, pp. 38-41.

[17] *Id.* at 42-45.

[18] *Id.* at 49-51.

[19] *Id.* at 46-48.

executed by Potente in his favor. As a result, TCT Nos. 14704, 14705 and 14706 were issued in his name. When declared for real property tax purposes, the Assessor's Office of Parañaque assigned a market value in the amount of ₱641,870.00 and assessed value of ₱513,500.00 for the house.[20]

It was Valencia's contention that his properties were accurately valued in his SALNs, and that his house, which may look impressive, was a result of regular maintenance and minor additions or renovations introduced from time to time.

Valencia denied that he had been maintaining the two US dollar time deposits pointing out that the Letters of Agreement did not even bear his signature. Thus, the agreements were mere scraps of paper with no probative value.

On October 14, 2003, on the basis of the complaint of Guerrero, the Ombudsman placed Valencia under preventive suspension for six (6) months without pay. He sought the lifting of the order of preventive suspension, but his request was denied by the Ombudsman in its Order[21] dated November 14, 2003.

When the parties were required to submit their position papers,[22] Valencia manifested that he would waive his right to a formal investigation and would submit the case for decision.[23]

Complainant Guerrero did not file a position paper.

On April 6, 2004, for the purpose of verifying the complaint, the Ombudsman issued a subpoena *duces tecum*[24] against the BPI Card Customer Service Department. It requested for the clear and certified copies of Valencia's Mastercard transactions from 2003 backward.

After receiving the photocopies of the monthly statements for Valencia's Mastercard transactions, the Ombudsman required

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[20] *Id.* at 52.

[21] *Id.* at 85-87.

[22] *Id.* at 93.

[23] *Id.* at 95-96.

[24] *Id.* at 128.

Valencia to file his Comment. Valencia, however, filed a *Motion to Set Aside Order dated July 16, 2004 and for Early Resolution of Cases*.[25] According to him, the said order of the Ombudsman requiring him to file his comment after eight (8) long months of inaction was "irregular, unprocedural and in violation of his constitutional right to due process." He further pointed out that the monthly statements of the BPI Mastercard transactions were not original documents, thus, the authenticity and due execution of which must first be proven.

Valencia's motion was not acted upon by the Ombudsman. Instead, the Ombudsman issued a subpoena *duces tecum*[26] addressed to the manager of FEBTC to produce documents relative to the alleged time deposits in his name. Due to the acquisition of FEBTC by BPI, a similar subpoena[27] was addressed to the president of BPI on August 11, 2004.

In a letter[28] dated August 20, 2004, invoking the Court's ruling in *Lourdez T. Marquez v. Hon. Aniano A. Desierto*, [29] BPI informed the Ombudsman that absent any case pending before a court of competent jurisdiction, it was legally restricted from producing documents regarding bank deposits, particularly foreign currency deposits, without the written permission of the depositor.

Despite said letter, on August 27, 2004, Ernesto N. Olaguer *(Olaguer)*, the Service Manager of BPI in charge of the records of all deposit accounts, submitted an affidavit[30] stating that "[d]espite diligent efforts, and given the limited information on the US Dollar Time deposits, wherein only the number of the time deposit certificates and the amount were specified, [he was]

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[25] *Id.* at 222-226.

[26] *Id.* at 232.

[27] *Id.* at 234.

[28] *Id.* at 236-237.

[29] 412 Phil. 387 (2001).

[30] Records, p. 235.

not able to locate any time deposit records belonging to Manuel P. Valencia, Jr."

In its September 2, 2004 Order,[31] the Ombudsman required Olaguer and the counsel for BPI to appear before it for clarificatory hearing.

On September 30, 2004, being of the view that Valencia maintained a lavish lifestyle and lived beyond the modest means that his salary as a government official could offer, the Ombudsman opined that he must have derived income from unlawful sources. This, according to the Ombudsman, constituted deception and dishonesty which warranted his dismissal from office. Thus, the Ombudsman disposed:

> FOREGOING CONSIDERED, pursuant to Section 52 (A-1) Rule IV of the Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999, respondent MANUEL P. VALENCIA is hereby found guilty of DISHONESTY and is meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.
>
> SO ORDERED.

Valencia sought reconsideration of the Decision of the Ombudsman, but the same was denied on January 31, 2005.

At the CA, however, the decision of the Ombudsman was reversed. According to the CA, the charge of Unexplained Wealth under R.A. No. 1379 in relation to Section 8 of R.A. No. 3019 was separate and distinct from the offense of Dishonesty under Section 36 of Article IX of the Civil Service Decree of the Philippines.[32] The CA reasoned out that to hold Valencia liable for Dishonesty when in fact the charge against him was for Unexplained Wealth, violated Valencia's right to due process, especially his right to be informed of the charges against him and to be convicted only of the offense charged.

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[31] *Id.* at 238-239.

[32] *Rollo,* pp. 57-60.

Furthermore, it added that even if the offense of Dishonesty were to be considered, there was no substantial evidence on record to hold Valencia administratively liable. The CA, thus, explained:

> The evidence relied upon by the Office of the Ombudsman consists of petitioner's Statement of Assets and Liabilities (SALs) and photocopies of petitioner's Transfer of Certificate of Titles, photocopies of alleged Letters of Agreement executed between petitioner and then Far East Bank and Trust Company and unauthenticated copies of petitioner's alleged BPI Mastercard transactions. Furthermore, the Office of the Ombudsman believed respondent's speculations [1] that petitioner's money are fruits of his illegal transaction and activities as an employee of the Bureau of Customs, [2] that petitioner accomplished his SALs in a manner in order to evade investigation or criminal prosecution for acquiring unexplained wealth, and [3] that petitioner has a lavish spending habit.
>
> Aside from the certified true copies of petitioner's Statements of Assets and Liabilities (SALs), the pieces of evidence presented by respondent have no probative value for being mere photocopies. As such photocopies, as earlier averted to, they are incompetent pieces of evidence unworthy of any probative value.
>
> The genuineness and authenticity of the evidence against petitioner is grievously suspicious in view of the fact that the photocopies of the Letters of Agreement of petitioner's alleged time deposits with then Far East Bank and Trust Company and petitioner's alleged BPI Mastercard transactions are not certified as true copies by the responsible officer in custody of the originals thereof. Such being the case, the conclusions of the respondent arising from these pieces of evidence are mere hearsay which are, again, inadmissible in evidence pursuant to Section 36, Rule 130 of the Revised Rules of Court.[33]

Finally, the CA also opined that even assuming the evidence of the prosecution were admissible, the same was insufficient to hold Valencia guilty of the charges against him. Thus, it disposed:

> WHEREFORE, the instant petition is GRANTED. The assailed Decision dated 30 September 2004 and Order dated 31 January 2005

[33] *Id.* at 61-62.

of the Office of the Ombudsman are hereby REVERSED and SET ASIDE. The Order dated 14 October 2003 is NULLIFIED and petitioner is hereby REINSTATED to his former position without loss of seniority rights and with payment of back salaries and other accrued benefits.

Hence, this petition.

GROUNDS FOR ALLOWANCE OF PETITION

I.

THE HONORABLE COURT OF APPEALS' REVERSAL OF THE PETITIONER OFFICE OF THE OMBUDSMAN'S DECISION FINDING THAT PRIVATE RESPONDENT IS ADMINISTRATIVELY LIABLE FOR DISHONESTY IS AN ERROR OF LAW CONSIDERING THAT —

A. THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN AND SETTLED ADMINISTRATIVE LAW PRINCIPLES ALLOW THE OFFICE OF THE OMBUDSMAN TO RENDER ITS DECISION IN ADMINISTRATIVE DISCIPLINARY CASES BASED ON THE AFFIDAVITS AND DOCUMENTS CONSTITUTING THE EVIDENCE ON RECORD.

B. THE DOCUMENTARY EVIDENCE SHOWING PRIVATE RESPONDENT VALENCIA'S NON-DECLARATION IN HIS SALNs OF HIS ACQUISITION OF REAL PROPERTIES AND LAVISH LIFESTYLE, GROSSLY DISPROPORTIONATE TO HIS INCOME AS A GOVERNMENT EMPLOYEE, CONSTITUTED SUBSTANTIAL EVIDENCE OF HIS ADMINISTRATIVE LIABILITY FOR DISHONESTY.

II.

THE ISSUANCE OF THE PREVENTIVE SUSPENSION ORDER BY THE PETITIONER OFFICE OF THE OMBUDSMAN IN FINDING, AT THAT STAGE, THE EVIDENCE OF GUILT ON THE PART OF PRIVATE RESPONDENT VALENCIA FOR DISHONESTY BEING THUS FAR STRONG.[34]

On due process, the Court agrees with the Ombudsman that Valencia was not deprived of his constitutional right thereto.

[34] *Id.* at 20-21.

Section 7 and Section 8 of R.A. No. 3019 explain the nature and importance of accomplishing a true, detailed and sworn SALN, thus:

Sec. 7. *Statement of Assets and Liabilities*. — Every public officer, within thirty days after assuming office, and thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of corresponding Department Head, or in the case of a Head Department or chief of an independent office, with the Office of the President, a true, detailed and sworn statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of said calendar year.

Sec. 8. *Prima Facie Evidence of and Dismissal Due to Unexplained Wealth*. — If in accordance with the provisions of Republic Act Numbered One Thousand Three Hundred Seventy-Nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this Section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

In the case of *Carabeo v. Court of Appeals*,[35] citing *Ombudsman v. Valeroso*,[36] the Court restated the rationale for the SALN and the evils that it seeks to thwart, to wit:

> Section 8 above, speaks of *unlawful acquisition* of wealth, the evil sought to be suppressed and avoided, and Section 7, which mandates full disclosure of wealth in the SALN, is a means of preventing said evil and is aimed particularly at curtailing and minimizing, the opportunities for official corruption and maintaining a standard of honesty in the public service. **"Unexplained" matter normally results from "non-disclosure" or concealment of vital facts.** SALN, which all public officials and employees are mandated to file, are the means to achieve the policy of accountability of all public officers and employees in the government. By the SALN, the public are able to monitor movement in the fortune of a public official; it is a valid check and balance mechanism to verify undisclosed properties and wealth. [Emphasis supplied]

On the other hand, Dishonesty is incurred when an individual intentionally makes a false statement of any material fact, practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion.[37] It is understood to imply 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; the disposition to defraud, deceive or betray.[38] It is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee.[39] Like the offense of Unexplained Wealth, Section 52 (A) (1), Rule IV of the Revised Uniform Rules on Administrative Cases in

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[35] G.R. Nos. 178000 and 178003, December 04, 2009, 607 SCRA 394, 412.

[36] G.R. No. 167828, April 02, 2007, 520 SCRA 140, 149-150.

[37] *Pleyto v. PNP-CIDG*, G.R. No. 169982, November 23, 2007, 538 SCRA 534, 586.

[38] *Ampong v. Civil Service Commission, CSC-Regional Office No. 11*, G.R. No. 167916, August 26, 2008, 563 SCRA 293, 307.

[39] *Civil Service Commission v. Sta. Ana*, 435 Phil. 1, 12 (2002).

Civil Service treats Dishonesty as a grave offense, the penalty of which is dismissal from the service at the first infraction.

From the above, when the statement of wealth becomes manifestly disproportionate to an employee's income or other sources of income and he fails to properly account or explain his other sources of income, he becomes liable for Dishonesty. This is especially true considering that when a public officer takes an oath or office, he binds himself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, a public officer in the discharge of duties, is to use that prudence, caution and attention which careful persons use in the management of his affairs.[40]

Consequently, an accused charged with Unexplained Wealth cannot claim to have been denied due process should he be held administratively liable for Dishonesty.

It should be pointed out that the actual recital of facts of the complaint shows that the nature and cause of the accusation hurled by Guerrero includes the charge of Dishonesty. Well-settled is the rule that what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint, nor the specification of the provision of law alleged to have been violated, they being conclusions of law.[41]

The Court, however, sustains the finding of the CA that there is no substantial evidence to hold Valencia liable for Dishonesty.

Administrative proceedings are governed by the "substantial evidence rule." Otherwise stated, a finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has

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[40] *Atty. Salumbides v. Office of the Ombudsman*, G.R. No. 180917, April 23, 2010.

[41] *Nombrefia v. People*, G.R. No. 157919, January 30, 2007, 513 SCRA 369, 374-375; *Matilde, Jr. v. Jabson*, 160-A Phil. 1098 (1975).

committed acts stated in the complaint.[42] Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[43]

The question of whether there is sufficient evidence to hold Valencia liable for the charges against him is one of fact, which is not generally subject to review by the Court. A review of the facts, however, is in order not only because the findings of fact of the Ombudsman and the CA were diametrically opposed, but also because the Ombudsman decision was alleged to have been grounded on speculations, surmises and conjectures.

It should be noted that other than the SALNs of Valencia, the evidence of the prosecution consists of photocopies of 1] the unsigned letters of agreement alluding to Valencia's dollar time deposit accounts; and 2] the monthly statements of the BPI Mastercard transactions of Valencia.

Indeed, in administrative proceedings, the law does not require evidence beyond reasonable doubt or preponderance of evidence. Substantial evidence is enough. This presupposes, however, that the evidence proferred is admissible under the rules. With respect to photocopied private documents, the rule is that before it can be considered admissible in evidence, its due execution or genuineness should be first shown.[44] Failing in this, the photocopies are inadmissible in evidence; at the very least, it has no probative value.[45]

As the records bear out, the due execution and genuineness of the photocopied letters of agreement and monthly statements of the BPI Mastercard transactions of Valencia were never verified

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[42] *Office of the Ombudsman v. Santos*, G.R. No. 166116, March 31, 2006, 486 SCRA 463, 470.

[43] *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003).

[44] *Unchuan v. Lozaga*, G.R. No. 172671, April 16, 2009, 585 SCRA 421, 432.

[45] *Office of the Ombudsman v. Coronel*, G.R. No. 164460, June 27, 2006, 493 SCRA 392.

and confirmed. The basic rule is that these photocopied private documents are secondary evidence which are inadmissible unless there is ample proof of the loss of the originals.[46] Absent such proof, these documents are incompetent as evidence. The Court cannot rightly appreciate firsthand the genuineness of an unverified and unidentified document, much less, accord it evidentiary value.[47]

Regarding the photocopied letters of agreement, these were not even signed by Valencia. Thus, these letters of agreement relating to the alleged dollar time deposits of Valencia and his credit card billings are incompetent pieces of evidence unworthy of any probative value.

As to the US dollar deposits, the Ombudsman did try to verify them. On August 27, 2004, however, as earlier stated, Olaguer, the Service Manager of BPI in charge of the records of all deposit accounts, stated in his affidavit that "[d]espite diligent efforts, and given the limited information on the US Dollar Time deposits, wherein only the number of the time deposit certificates and the amount were specified, [he was] not able to locate any time deposit records belonging to Manuel P. Valencia, Jr."

To dismiss a public officer or employee on the basis of photocopies of private documents which are questioned and disputed is to set a dangerous precedent. It can be abused by oppressive or abusive superiors who may want their own protégé to replace the charged officers or employees or by any individual who may want to harass a public employee for no legitimate reason at all. Photocopies should only be considered as evidence if they are not contested, if they are admitted, or if they constitute matters which need not be proved. Unverified photocopied private documents are not evidence which a reasonable mind might accept as adequate to support a conclusion.

Nevertheless, granting that these pieces of evidence relied upon by the Ombudsman are admissible in evidence, the Court

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[46] Section 3, Rule 130, Revised Rules of Court.

[47] *People v. Sumalpong*, 348 Phil. 501, 522 (1998).

still finds the same insufficient to establish the liability of Valencia for Dishonesty. The Court quotes, with approval, the following disquisition of the CA on the matter:

> Besides, even *gratia argumenti* that the evidence are admissible, still, respondent's evidence against the petitioner is not sufficient to hold the petitioner guilty of the charges against him. The following evidence on record should have impelled the Office of the Ombudsman to absolve the petitioner:
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> 1. Petitioner's family owned a house and lot in Dasmariñas, Village, Makati City which they sold in 1977 for a hefty sum of ₱1,500,000.00.
> 2. Petitioner and his family acquired their present residential house and lot in BF Homes, Parañaque City (composed of three contiguous lots) by leasing it from petitioner's aunt in 1985 until they were able to buy it in 1988.
> 3. Petitioner purchased two adjacent lots in August 1988.
> 4. The cumulative acquisition cost of his house and lot which is ₱1,225,070.00 and its current assessed value at ₱713,210.00 were duly reflected in petitioner's Statement of Assets and Liabilities (SALs) from 1994 to 2001.

As observed by the CA, the Ombudsman totally ignored the affidavit of BPI Service Manager Olaguer certifying that he could not locate any time deposit record belonging to Valencia. Being a responsible officer in custody of the supposed time deposits, his attestation is the best evidence that the bank does not have a record of any time deposit in the name of Valencia.

In sum, with the presented SALNs being the only competent evidence for the prosecution, the Court upholds the finding of the CA that there is no substantial evidence that respondent Manuel P. Valencia [1] acquired property though unlawful means, [2] maintained US time deposit accounts, and [3] lived a lavish lifestyle.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183984. April 13, 2011]

ARTURO SARTE FLORES, *petitioner, vs.* **SPOUSES ENRICO L. LINDO, JR. and EDNA C. LINDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; THE MORTGAGE-CREDITOR HAS A SINGLE CAUSE OF ACTION AGAINST A MORTGAGE-DEBTOR; OPTIONS AVAILABLE TO THE MORTGAGE-CREDITOR; TWO REMEDIES ARE ALTERNATIVE AND EACH REMEDY IS COMPLETE BY ITSELF. — The rule is that a mortgage-creditor has a single cause of action against a mortgagor-debtor, that is, to recover the debt. The mortgage-creditor has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security. An election of the first bars recourse to the second, otherwise there would be multiplicity of suits in which the debtor would be tossed from one venue to another depending on the location of the mortgaged properties and the residence of the parties. The two remedies are alternative and each remedy is complete by itself. If the mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the debt, and *vice versa*. The Court has ruled that if a creditor is allowed to file his separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, he will, in effect, be authorized plural redress for a single breach of contract at so much costs to the court and with so much vexation and oppressiveness to the debtor.

2. CIVIL LAW; FAMILY CODE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; SYSTEM OF ABSOLUTE COMMUNITY AND CONJUGAL PARTNERSHIP OF GAINS; ARTICLE 96 AND ARTICLE 124, CONSTRUED; EFFECT OF THE EXECUTION OF THE SPECIAL POWER OF ATTORNEY IN CASE AT BAR. — Article 124 of the Family Code of which applies to conjugal

partnership property, is a reproduction of Article 96 of the Family Code which applies to community property. Both Article 96 and Article 127 of the Family Code provide that the powers do not include disposition or encumbrance without the written consent of the other spouse. Any disposition or encumbrance without the written consent shall be void. However, both provisions also state that "the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, **and may be perfected as a binding contract upon the acceptance by the other spouse** x x x before the offer is withdrawn by either or both offerors." In this case, the Promissory Note and the Deed of Real Estate Mortgage were executed on 31 October 1995. The Special Power of Attorney was executed on 4 November 1995. **The execution of the SPA is the acceptance by the other spouse that perfected the continuing offer as a binding contract between the parties, making the Deed of Real Estate Mortgage a valid contract.**

3. ID.; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT; ELUCIDATED; APPLICABLE IN CASE AT BAR. — There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another. The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration. The principle is applicable in this case considering that Edna admitted obtaining a loan from petitioners, and the same has not been fully paid without just cause. The Deed was declared void erroneously at the instance of Edna, first when she raised it as a defense before the RTC, Branch 33 and second, when she filed an action for declaratory relief before the RTC, Branch 93. Petitioner could not be expected to ask the RTC, Branch 33 for an alternative remedy, as what the Court of Appeals ruled that he should have done, because the RTC, Branch 33 already stated that it had no jurisdiction over any personal action that petitioner might have against Edna. Considering the circumstances of this case, the principle against unjust enrichment, being a substantive law,

should prevail over the procedural rule on multiplicity of suits. The Court of Appeals, in the assailed decision, found that Edna admitted the loan, except that she claimed it only amounted to ₱340,000. Edna should not be allowed to unjustly enrich herself because of the erroneous decisions of the two trial courts when she questioned the validity of the Deed. Moreover, Edna still has an opportunity to submit her defenses before the RTC, Branch 42 on her claim as to the amount of her indebtedness.

APPEARANCES OF COUNSEL

Renato A. Abejero for petitioner.
Sam Norman G. Fuentes for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 30 May 2008 Decision[2] and the 4 August 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 94003.

The Antecedent Facts

The facts, as gleaned from the Court of Appeals' Decision, are as follows:

On 31 October 1995, Edna Lindo (Edna) obtained a loan from Arturo Flores (petitioner) amounting to ₱400,000 payable on 1 December 1995 with 3% compounded monthly interest and 3% surcharge in case of late payment. To secure the loan, Edna executed a Deed of Real Estate Mortgage[4] (the Deed)

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 7-16. Penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. (now Supreme Court Justice) and Andres B. Reyes, Jr., concurring.

[3] *Id.* at 18-20.

[4] *Id.* at 53-60.

covering a property in the name of Edna and her husband Enrico (Enrico) Lindo, Jr. (collectively, respondents). Edna also signed a Promissory Note[5] and the Deed for herself and for Enrico as his attorney-in-fact.

Edna issued three checks as partial payments for the loan. All checks were dishonored for insufficiency of funds, prompting petitioner to file a Complaint for Foreclosure of Mortgage with Damages against respondents. The case was raffled to the Regional Trial Court of Manila, Branch 33 (RTC, Branch 33) and docketed as Civil Case No. 00-97942.

In its 30 September 2003 Decision,[6] the RTC, Branch 33 ruled that petitioner was not entitled to judicial foreclosure of the mortgage. The RTC, Branch 33 found that the Deed was executed by Edna without the consent and authority of Enrico. The RTC, Branch 33 noted that the Deed was executed on 31 October 1995 while the Special Power of Attorney (SPA) executed by Enrico was only dated 4 November 1995.

The RTC, Branch 33 further ruled that petitioner was not precluded from recovering the loan from Edna as he could file a personal action against her. However, the RTC, Branch 33 ruled that it had no jurisdiction over the personal action which should be filed in the place where the plaintiff or the defendant resides in accordance with Section 2, Rule 4 of the Revised Rules on Civil Procedure.

Petitioner filed a motion for reconsideration. In its Order[7] dated 8 January 2004, the RTC, Branch 33 denied the motion for lack of merit.

On 8 September 2004, petitioner filed a Complaint for Sum of Money with Damages against respondents. It was raffled to Branch 42 (RTC, Branch 42) of the Regional Trial Court of Manila, and docketed as Civil Case No. 04-110858.

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[5] *Id.* at 52.

[6] *Id.* at 84-88. Penned by Judge Reynaldo G. Ros.

[7] *Id.* at 89-90.

Respondents filed their Answer with Affirmative Defenses and Counterclaims where they admitted the loan but stated that it only amounted to ₱340,000. Respondents further alleged that Enrico was not a party to the loan because it was contracted by Edna without Enrico's signature. Respondents prayed for the dismissal of the case on the grounds of improper venue, res judicata and forum-shopping, invoking the Decision of the RTC, Branch 33. On 7 March 2005, respondents also filed a Motion to Dismiss on the grounds of *res judicata* and lack of cause of action.

The Decision of the Trial Court

On 22 July 2005, the RTC, Branch 42 issued an Order[8] denying the motion to dismiss. The RTC, Branch 42 ruled that *res judicata* will not apply to rights, claims or demands which, although growing out of the same subject matter, constitute separate or distinct causes of action and were not put in issue in the former action. Respondents filed a motion for reconsideration. In its Order[9] dated 8 February 2006, the RTC, Branch 42 denied respondents' motion. The RTC, Branch 42 ruled that the RTC, Branch 33 expressly stated that its decision did not mean that petitioner could no longer recover the loan petitioner extended to Edna.

Respondents filed a Petition for *Certiorari* and *Mandamus* with Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order before the Court of Appeals.

The Decision of the Court of Appeals

In its 30 May 2008 Decision, the Court of Appeals set aside the 22 July 2005 and 8 February 2006 Orders of the RTC, Branch 42 for having been issued with grave abuse of discretion.

The Court of Appeals ruled that while the general rule is that a motion to dismiss is interlocutory and not appealable, the rule admits of exceptions. The Court of Appeals ruled that

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[8] *Id.* at 48-50. Penned by Judge Guillermo G. Purganan.

[9] *Id.* at 51. Penned by Judge Vedasto R. Marco.

the RTC, Branch 42 acted with grave abuse of discretion in denying respondents' motion to dismiss.

The Court of Appeals ruled that under Section 3, Rule 2 of the 1997 Rules of Civil Procedure, a party may not institute more than one suit for a single cause of action. If two or more suits are instituted on the basis of the same cause of action, the filing of one on a judgment upon the merits in any one is available ground for the dismissal of the others. The Court of Appeals ruled that on a nonpayment of a note secured by a mortgage, the creditor has a single cause of action against the debtor, that is recovery of the credit with execution of the suit. Thus, the creditor may institute two alternative remedies: either a personal action for the collection of debt or a real action to foreclose the mortgage, but not both. The Court of Appeals ruled that petitioner had only one cause of action against Edna for her failure to pay her obligation and he could not split the single cause of action by filing separately a foreclosure proceeding and a collection case. By filing a petition for foreclosure of the real estate mortgage, the Court of Appeals held that petitioner had already waived his personal action to recover the amount covered by the promissory note.

Petitioner filed a motion for reconsideration. In its 4 August 2008 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in dismissing the complaint for collection of sum of money on the ground of multiplicity of suits.

The Ruling of this Court

The petition has merit.

The rule is that a mortgage-creditor has a single cause of action against a mortgagor-debtor, that is, to recover the debt.[10]

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[10] *Tanchan v. Allied Banking Corporation*, G.R. No. 164510, 25 November 2008, 571 SCRA 512.

The mortgage-creditor has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security.[11] An election of the first bars recourse to the second, otherwise there would be multiplicity of suits in which the debtor would be tossed from one venue to another depending on the location of the mortgaged properties and the residence of the parties.[12]

The two remedies are alternative and each remedy is complete by itself.[13] If the mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the debt, and *vice versa*.[14] The Court explained:

> x x x in the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election. On the other hand, a rule that would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice (*Soriano v. Enriques*, 24 Phil. 584) and obnoxious to law

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[11] *Id.*

[12] *Id.*

[13] *BPI Family Savings Bank, Inc. v. Vda. De Coscolluela*, G.R. No. 167724, 27 June 2006, 493 SCRA 472.

[14] *Id.*

and equity (*Osorio v. San Agustin*, 25 Phil. 404), but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies.[15]

The Court has ruled that if a creditor is allowed to file his separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, he will, in effect, be authorized plural redress for a single breach of contract at so much costs to the court and with so much vexation and oppressiveness to the debtor.[16]

In this case, however, there are circumstances that the Court takes into consideration.

Petitioner filed an action for foreclosure of mortgage. The RTC, Branch 33 ruled that petitioner was not entitled to judicial foreclosure because the Deed of Real Estate Mortgage was executed without Enrico's consent. The RTC, Branch 33 stated:

> All these circumstances certainly conspired against the plaintiff who has the burden of proving his cause of action. On the other hand, said circumstances tend to support the claim of defendant Edna Lindo that her husband did not consent to the mortgage of their conjugal property and that the loan application was her personal decision.
>
> Accordingly, since the Deed of Real Estate Mortgage was executed by defendant Edna Lindo lacks the consent or authority of her husband Enrico Lindo, the Deed of Real Estate Mortgage is void pursuant to Article 96 of the Family Code.
>
> This does not mean, however, that the plaintiff cannot recover the ₱400,000 loan plus interest which he extended to defendant Edna Lindo. He can institute a personal action against the defendant for the amount due which should be filed in the place where the plaintiff resides, or where the defendant or any of the principal defendants resides at the election of the plaintiff in accordance with

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[15] *Id.* at 493 citing *Bachrach Motor Co., Inc. v. Esteban Icarañgal and Oriental Commercial Co., Inc.,* 68 Phil. 287 (1939).

[16] *Id.*

Section 2, Rule 4 of the Revised Rules on Civil Procedure. This Court has no jurisdiction to try such personal action.[17]

Edna did not deny before the RTC, Branch 33 that she obtained the loan. She claimed, however, that her husband did not give his consent and that he was not aware of the transaction.[18] Hence, the RTC, Branch 33 held that petitioner could still recover the amount due from Edna through a personal action over which it had no jurisdiction.

Edna also filed an action for declaratory relief before the RTC, Branch 93 of San Pedro Laguna (RTC, Branch 93), which ruled:

> At issue in this case is the validity of the promissory note and the Real Estate Mortgage executed by Edna Lindo without the consent of her husband.
>
> The real estate mortgage executed by petition Edna Lindo over their conjugal property is undoubtedly an act of strict dominion and must be consented to by her husband to be effective. In the instant case, the real estate mortgage, absent the authority or consent of the husband, is necessarily void. Indeed, the real estate mortgage is this case was executed on October 31, 1995 and the subsequent special power of attorney dated November 4, 1995 cannot be made to retroact to October 31, 1995 to validate the mortgage previously made by petitioner.
>
> The liability of Edna Lindo on the principal contract of the loan however subsists notwithstanding the illegality of the mortgage. Indeed, where a mortgage is not valid, the principal obligation which it guarantees is not thereby rendered null and void. That obligation matures and becomes demandable in accordance with the stipulation pertaining to it. Under the foregoing circumstances, what is lost is merely the right to foreclose the mortgage as a special remedy for satisfying or settling the indebtedness which is the principal obligation. In case of nullity, the mortgage deed remains as evidence or proof of a personal obligation of the debtor and the amount due to the creditor may be enforced in an ordinary action.

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[17] *Rollo*, pp. 87-88.

[18] *Id.* at 86.

In view of the foregoing, judgment is hereby rendered declaring the deed of real estate mortgage as void in the absence of the authority or consent of petitioner's spouse therein. The liability of petitioner on the principal contract of loan however subsists notwithstanding the illegality of the real estate mortgage.[19]

The RTC, Branch 93 also ruled that Edna's liability is not affected by the illegality of the real estate mortgage.

Both the RTC, Branch 33 and the RTC, Branch 93 misapplied the rules.

Article 124 of the Family Code provides:

Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent the disposition or encumbrance shall be void. **However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.** (Emphasis supplied)

Article 124 of the Family Code of which applies to conjugal partnership property, is a reproduction of Article 96 of the Family Code which applies to community property.

Both Article 96 and Article 124 of the Family Code provide that the powers do not include disposition or encumbrance without the written consent of the other spouse. Any disposition or encumbrance without the written consent shall be void. However,

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[19] *Id.* at 81-82.

both provisions also state that "the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, **and may be perfected as a binding contract upon the acceptance by the other spouse** x x x before the offer is withdrawn by either or both offerors."

In this case, the Promissory Note and the Deed of Real Estate Mortgage were executed on 31 October 1995. The Special Power of Attorney was executed on 4 November 1995. **The execution of the SPA is the acceptance by the other spouse that perfected the continuing offer as a binding contract between the parties, making the Deed of Real Estate Mortgage a valid contract.**

However, as the Court of Appeals noted, petitioner allowed the decisions of the RTC, Branch 33 and the RTC, Branch 93 to become final and executory without asking the courts for an alternative relief. The Court of Appeals stated that petitioner merely relied on the declarations of these courts that he could file a separate personal action and thus failed to observe the rules and settled jurisprudence on multiplicity of suits, closing petitioner's avenue for recovery of the loan.

Nevertheless, petitioner still has a remedy under the law.

In *Chieng v. Santos*,[20] this Court ruled that a mortgage-creditor may institute against the mortgage-debtor either a personal action for debt or a real action to foreclose the mortgage. The Court ruled that the remedies are alternative and not cumulative and held that the filing of a criminal action for violation of *Batas Pambansa Blg.* 22 was in effect a collection suit or a suit for the recovery of the mortgage-debt.[21] In that case, however, this Court *pro hac vice*, ruled that respondents could still be held liable for the balance of the loan, applying the principle that no person may unjustly enrich himself at the expense of another.[22]

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[20] G.R. No. 169647, 31 August 2007, 531 SCRA 730.

[21] *Id.*

[22] *Id.*

The principle of unjust enrichment is provided under Article 22 of the Civil Code which provides:

> Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience."[23] The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.[24]

The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration.[25] The principle is applicable in this case considering that Edna admitted obtaining a loan from petitioners, and the same has not been fully paid without just cause. The Deed was declared void erroneously at the instance of Edna, first when she raised it as a defense before the RTC, Branch 33 and second, when she filed an action for declaratory relief before the RTC, Branch 93. Petitioner could not be expected to ask the RTC, Branch 33 for an alternative remedy, as what the Court of Appeals ruled that he should have done, because the RTC, Branch 33 already stated that it had no jurisdiction over any personal action that petitioner might have against Edna.

Considering the circumstances of this case, the principle against unjust enrichment, being a substantive law, should prevail over

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[23] *Republic v. Court of Appeals,* G.R. No. 160379, 14 August 2009, 596 SCRA 57 citing *Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board*, G.R. No. 163101, 13 February 2008, 545 SCRA 196 and *Cool Car Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, 23 Janaury 2006, 479 SCRA 404.

[24] *Republic v. Court of Appeals, supra*.

[25] *P.C. Javier & Sons, Inc. v. Court of Appeals*, 500 Phil. 419 (2005).

the procedural rule on multiplicity of suits. The Court of Appeals, in the assailed decision, found that Edna admitted the loan, except that she claimed it only amounted to ₱340,000. Edna should not be allowed to unjustly enrich herself because of the erroneous decisions of the two trial courts when she questioned the validity of the Deed. Moreover, Edna still has an opportunity to submit her defenses before the RTC, Branch 42 on her claim as to the amount of her indebtedness.

WHEREFORE, the 30 May 2008 Decision and the 4 August 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 94003 are *SET ASIDE*. The Regional Trial Court of Manila, Branch 42 is directed to proceed with the trial of Civil Case No. 04-110858.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189457. April 13, 2011]

SUNRISE HOLIDAY CONCEPTS, INC., *petitioner, vs.* **TERESA A. ARUGAY,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN AN ILLEGAL DISMISSAL CASE, THE *ONUS PROBANDI* RESTS ON THE EMPLOYER THAT THE DISMISSAL OF AN EMPLOYEE IS FOR VALID CAUSE. — In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee is for a valid cause.

2. ID.; ID.; ID.; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; MUST BE BASED ON A WILLFUL BREACH OF TRUST AND FOUNDED ON CLEARLY ESTABLISHED FACTS; EXPLAINED; NOT PROVEN IN CASE AT BAR. — Loss of trust and confidence to be a valid ground for dismissal must be based on a willful breach of trust and founded on clearly established facts. A 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. Otherwise stated, it must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices, or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or a subterfuge for causes that are improper, illegal, or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee that must be established by substantial evidence. In this case, petitioner failed to prove that respondent's dismissal was for a valid cause. The CA committed no reversible error in issuing the Amended Decision upholding the illegal dismissal of respondent. The penalty of dismissal is not commensurate to the infraction committed by the employee. Based on the findings of fact by the LA, which were affirmed by the NLRC and the CA, respondent made only three (3) personal calls using the company " issued cellular phone, and the total cost of the said calls was Nine Pesos (₱9.00). Respondent herself duly recorded the said personal calls on the company logbook so that the same could be charged to her personal account, which disproves the imputation of her dishonesty. On the alleged tardiness committed by respondent, the same is not grave as to merit respondent's dismissal from service, considering that if it was true that respondent had been habitually tardy for several months, petitioner would not have retained her services beyond the probationary period.

3. ID.; ID.; ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL, NOT PROPER. — A lesser penalty should have been imposed by petitioner company to respondent considering that she has no history of previous infractions. The penalty of dismissal is not commensurate to the violation committed by her. It bears

stressing that while an employer enjoys a wide latitude of discretion in the promulgation of policies, rules, and regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must always be commensurate to the offense involved and to the degree of the infraction.

APPEARANCES OF COUNSEL

Arthur C. Corpuz for petitioner.
Bolisay & Partners Law Offices for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari*, assailing the Amended Decision[1] dated April 7, 2009 and the Resolution[2] dated September 2, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 100227.

The Facts

Version of the Employee

On February 16, 2004, respondent was engaged by petitioner as Collection Manager under a six (6)-month probationary period. She was promised a compensation of Sixteen Thousand Pesos (₱16,000.00) plus Two Thousand Pesos (₱2,000.00), which shall be adjusted to Twenty-Five Thousand Pesos (₱25,000.00) at the end of the 6-month probationary period. After six (6) months, respondent continued to work for petitioner company but it made no salary adjustment.[3]

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rebecca de Guia-Salvador and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 112-117.

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

[3] *Id.* at 204.

As part of her functions, respondent coordinated largely with her four (4) collectors and with clients, numbering more than two thousand (2,000), from whom she was collecting existing accounts for petitioner company. In the exercise of her functions, respondent made use of the company's old mobile phone. Extensive coordination with company employees and with clients compelled respondent to bring the cellular phone out of the company premises. No one told respondent that she had to get permission from higher management to bring out the said cellular phone. Respondent's job as a Collection Manager required her to be persistent with those whom she dealt with to collect badly needed funds for the company.[4]

In the course of her functions, respondent sent a memorandum chiding her Assistant Collection Manager for the latter's lack of dedication and her act of cheating on her timecard. Unfortunately, the Assistant Collection Manager made an issue out of this and complained to the Executive Assistant of petitioner company. The Executive Assistant favored the Assistant Collection Manager, who is his goddaughter, and ignored respondent's report.[5]

On September 20, 2004, respondent received a show-cause Memorandum for: "(A) Act of Dishonesty—unauthorized bringing into or taking out any article from company premises. From April 2004 to present, you have been bringing home the Company's mobile phone during weekends without prior approval and consent from higher authority/ies and allegedly using the same for your personal use; (B) Tardiness. For incurring excessive and habitual tardiness of more than five (5) times in a month without just and valid reasons."[6]

Respondent was stunned by such charges because, as early as March 2004, she had already expressed the urgent need of a cellular phone in the operation of her department. In April 2004, respondent even submitted to petitioner a formal request or

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[4] *Id.* at 204-205.

[5] *Id.* at 205.

[6] *Id.*

requisition for a mobile phone for each collector, as well as a unit for herself, as Collection Manager. The request for a cellular phone for herself was specified to cover her personal calls, on the understanding that the Collection Department would be able to increase its output or collections. No objection was expressed by petitioner to such request. Respondent rendered uncompensated overtime on weekdays, and reported for work on Saturdays and even on holidays, believing that her dedication, discipline, and hard work would be valued by petitioner. Respondent was hurt when she, a manager of petitioner company, was charged for minutes of tardiness, when she had rendered much more to the company.[7]

On September 21, 2004, respondent submitted her written explanation intensely denying the charges imputed to her. She requested for a formal confrontation with her accusers in order to address the issues against her. To her surprise, the Executive Assistant of petitioner company denied her request for a confrontation, while she was preventively suspended to make way for an administrative investigation.[8]

On September 28, 2004, respondent received a termination letter for alleged loss of trust and confidence, which termination was immediately effective.[9] The pertinent portion of the termination letter reads: "[T]he Management has found that you have patently violated our company rules and regulations with the unlawful use of company property, poor management style, misdemeanor and conduct unbecoming of an officer of the company."[10]

Thus, respondent filed a case for illegal dismissal, nonpayment of 13th month pay, payment of damages and attorney's fees against petitioner before the Arbitration Branch of the National Labor Relations Commission (NLRC).[11]

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[7] *Id.*

[8] *Id.* at 98.

[9] *Id.* at 205.

[10] *Id.* at 98.

[11] *Id.* at 206.

Version of the Employer

Respondent was hired as a probationary employee with the position of Collection Manager on February 16, 2004. She had a basic monthly salary of ₱16,000.00, with an allowance of ₱2,000.[12]

Prior to her engagement, respondent was duly apprised of her duties and responsibilities, pertinent company standards, company policies, rules, and regulations. Among such policies made known to respondent was the prohibition on the bringing home company properties and using the same for personal purposes. One such property was the cellular phone issued to respondent.[13]

As Collection Manager, respondent habitually exercised discretion and independent judgment in the supervision and control of company resources and properties assigned to her department, subject to existing company policies, rules, and regulations. She was charged with the care and safekeeping of these properties.[14]

Respondent was tasked to exercise discretion and independent judgment in areas involving the formulation of effective programs and measures to enhance the company's collection of its receivables and to ensure that these receivables were all safely kept, accounted and properly endorsed to the proper company official. The said cellular phone was issued to respondent for her to use within the company premises and strictly for official purposes only.[15]

However, respondent, in deliberate disregard of and disobedience to company policy, repeatedly and habitually brought

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The case was entitled, "*Teresa Arguelles Arugay v. Sunrise Holiday Concepts, Inc., and/or Arch. Enrique O. Olanan (owner).*" (Petitioner's Position Paper before the Arbitration Branch of the NLRC; *id.* at 52.)

[12] *Id.* at 99.

[13] *Id.* at 206.

[14] *Id.*

[15] *Id.*

home the cellular phone issued to her by the company. She made several personal calls on said cellular phone during Saturdays and Sundays, which calls were paid for by the company to the latter's damage and prejudice. Moreover, respondent, with abuse of her rank and influence in several instances, borrowed money from her subordinates for personal purposes. Respondent engaged in rumormongering involving her subordinates, sowing intrigues and discord among her subordinates. Respondent also incurred more than five (5) tardiness each month for several months, which were contrary to the company policies, rules, and regulations. These prompted the company to formally ask respondent to explain her dishonesty, serious misconduct, and other violations in a Memorandum dated September 20, 2004.[16]

On September 21, 2004, respondent submitted her written explanation. She failed to satisfactorily explain her unauthorized use of the company's cellular phone even outside the office premises, including the charging of her personal calls. Respondent admitted her habitual tardiness, alleging that "the hours lost due to my tardiness are over compensated."[17]

On September 28, 2004, petitioner formally terminated respondent's employment.[18]

On May 28, 2005, the Labor Arbiter (LA) rendered a decision[19] in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal of complainant to be illegal. Accordingly, respondents are ordered jointly and severally:
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> 1. To reinstate complainant to her former position without loss of seniority rights and other privileges;
>
> 2. To pay complainant full backwages from time of dismissal which up to date amounts to ₱225,000.00 up to actual reinstatement;

[16] *Id.*

[17] *Id.* at 100.

[18] *Id.*

[19] Penned by Labor Arbiter Felipe P. Pati; *id.* at 176-184.

3. To pay complainant moral damages in the amount of ₱20,000.00;

4. To pay complainant exemplary damages in the amount of ₱20,000.00; and

5. To pay complainant attorney's fees equivalent to ten percent (10%) of the total award.

All other claims are denied.

SO ORDERED.

On appeal, the NLRC affirmed *in toto* the decision of the LA in a decision[20] dated November 17, 2006. Petitioner filed a motion for reconsideration. However, the NLRC denied the same in a resolution[21] dated June 18, 2007.

Undaunted, petitioner elevated the case to the CA. On June 26, 2008, the CA rendered a Decision[22] reversing the decision of the NLRC. The *fallo* of the Decision reads:

WHEREFORE, premises considered, the assailed issuances of the NLRC dated November 17, 2006, and June 18, 2007, are hereby **REVERSED** and **SET ASIDE**. Petitioner is **ORDERED** to pay the private respondent the amount of ₱30,000.00 as nominal damages for non-compliance with statutory due process.

SO ORDERED.[23]

Aggrieved, respondent filed a motion for reconsideration. On April 7, 2009, the CA rendered an Amended Decision[24] reinstating the decision and the resolution of the NLRC with modification, the dispositive portion of the said Amended Decision reads:

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[20] Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring; *id.* at 96-103.

[21] *Id.* at 104-105.

[22] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo; *id.* at 204-211.

[23] *Id.* at 211.

[24] *Supra* note 1.

WHEREFORE, the Motion for Reconsideration is **GRANTED**. The assailed Decision dated June 26, 2008 of this Court is **REVERSED** and **SET ASIDE.** The NLRC decision dated November 17, 2006 and resolution dated June 18, 2007, affirming the Labor Arbiter's decision, are **REINSTATED** with the **MODIFICATION** that should private respondent Teresa Arugay opt not to be reinstated, petitioner is ordered to pay her separation pay in the amount equivalent to one (1) month pay for every year of service, plus backwages from the date of her termination, minus Nine (9.00) pesos representing the amount for the three personal calls made by private respondent. The award for moral and exemplary damages and all other money claims, are **DELETED** for lack of sufficient basis.

SO ORDERED.[25]

Petitioner filed a motion for reconsideration, however, the CA denied the same in a Resolution dated September 2, 2009.

Hence, this petition.

The Issue

Whether respondent was illegally dismissed from employment by petitioner company.

The Ruling of the Court

In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee is for a valid cause.[26] Petitioner dismissed respondent from employment because of alleged loss of trust and confidence due to tardiness and for using the company issued cellular phone outside the company premises and for her own personal use.

Loss of trust and confidence to be a valid ground for dismissal must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly,

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[25] *Id.* at 116-117.

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

heedlessly, or inadvertently. Otherwise stated, it must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices, or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or a subterfuge for causes that are improper, illegal, or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee that must be established by substantial evidence.[27]

In this case, petitioner failed to prove that respondent's dismissal was for a valid cause. The CA committed no reversible error in issuing the Amended Decision upholding the illegal dismissal of respondent. The penalty of dismissal is not commensurate to the infraction committed by the employee. Based on the findings of fact by the LA, which were affirmed by the NLRC and the CA, respondent made only three (3) personal calls using the company-issued cellular phone, and the total cost of the said calls was Nine Pesos (₱9.00). Respondent herself duly recorded the said personal calls on the company logbook so that the same could be charged to her personal account, which disproves the imputation of her dishonesty. On the alleged tardiness committed by respondent, the same is not grave as to merit respondent's dismissal from service, considering that if it was true that respondent had been habitually tardy for several months, petitioner would not have retained her services beyond the probationary period. The LA amply explained the unjustifiable dismissal of respondent in this wise, *viz*.:

> This Office does not subscribe to the idea that complainant who is a manager should be dismissed for making three personal mobile phone calls worth ₱9.00, or for being late a number of times. Nor does this Office believe that complainant's act of taking outside of company premises a mobile phone in the pursuit of her office functions is an act of dishonesty. Complainant stated that she declared the

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[27] *School of the Holy Spirit of Quezon City v. Taguiam*, G.R. No. 165565, July 14, 2008, 558 SCRA 224-225, 231-232.

three calls worth ₱9.00 in the company logbook before making the calls so that they can be charged to her personal account; That she was not aware of any existing company policy prohibiting the taking out of company premises the cellular phone (Annex "10"); That she was not furnished with a copy of the company's written policies (Code of Good Behavior) despite her repeated requests; That prior to accusations being made against her, she expressed the need for, and formalized a request for the requisition of cellular phones for each collector in the company and one for herself for official use as well as for personal calls, and management did not object; That she had rendered much overtime, including work on her rest day and holidays; and that the company's Executive Assistant expressed his high regard of complainant's performance before accusations were made against her. Respondents failed to controvert these allegations, and they are therefore deemed admitted. The records confirm that there is no proof that a copy of respondents' company policies (Annex "A" of respondents' reply) was furnished to complainant prior to the alleged violations.

Respondents stated that complainant was "a grossly dishonest managerial employee and the epitome of what is classically called a 'bad example'. . ." If this was true, respondents could have easily dismissed complainant during the probationary period that ended a month before complainant was dismissed. But respondents did not.[28]

Finally, a lesser penalty should have been imposed by petitioner company to respondent considering that she has no history of previous infractions. The penalty of dismissal is not commensurate to the violation committed by her. It bears stressing that while an employer enjoys a wide latitude of discretion in the promulgation of policies, rules, and regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must always be commensurate to the offense involved and to the degree of the infraction.[29]

WHEREFORE, in view of the foregoing, the instant petition is hereby *DENIED*. The Amended Decision dated April 7, 2009

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[28] *Rollo,* pp. 79-80.

[29] *Moreno v. San Sebastian-Recoletos, Manila*, G.R. No. 175283, March 28, 2008, 550 SCRA 416, 429.

and the Resolution dated September 2, 2009 of the Court of Appeals in CA-G.R. SP No. 100227 are hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189655. April 13, 2011]

AOWA ELECTRONIC PHILIPPINES, INC., *petitioner, vs.* **DEPARTMENT OF TRADE AND INDUSTRY, National Capital Region,** *respondent.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 7394 (CONSUMER ACT OF THE PHILIPPINES); DEPARTMENT OF TRADE AND INDUSTRY; HAS THE AUTHORITY AND MANDATE TO ACT UPON THE COMPLAINTS FILED AGAINST PETITIONER IN CASE AT BAR; BASIS. — Contrary to Aowa's postulations, the DTI has the authority and the mandate to act upon the complaints filed against Aowa. Article 2 of the Consumer Act clearly sets forth the policy of the State on consumer protection, *viz.*: ART 2. *Declaration of Basic Policy*. — It is the policy of the State to protect the interests of the consumer, promote his general welfare and to establish standards of conduct for business and industry. Towards this end, the State shall implement measures to achieve the following objectives: a) protection against hazards to health and safety; b) protection against deceptive, unfair and unconscionable sales acts and practices; c) provision of information and education to facilitate sound choice and the

proper exercise of rights by the consumer; d) provision of adequate rights and means of redress; and e) involvement of consumer representatives in the formulation of social and economic policies. This policy is reiterated in Article 48 of the Consumer Act, which provides that "*the State shall promote and encourage fair, honest and equitable relations among parties in consumer transactions and protect the consumer against deceptive, unfair and unconscionable sales acts or practices*." Verily, as espoused by the OSG, the DTI validly invoked Article 159 of the Consumer Act in order to effectuate this policy of the State by filing a formal charge against Aowa. It is indubitable that the DTI is tasked to protect the consumer against deceptive, unfair, and unconscionable sales, acts, or practices, as defined in Articles 50 and 52 of the Consumer Act.

2. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE DEPARTMENT OF TRADE AND INDUSTRY, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY ACCORDED RESPECTED BY THE SUPREME COURT. — By reason of the special knowledge and expertise of the DTI over matters falling under its jurisdiction, it is in a better position to pass judgment on the issues, and its findings of fact in that regard, especially when affirmed by the CA, are generally accorded respect, if not finality, by this Court. Furthermore, Aowa failed to refute DTI's finding that it did not secure any permit for its alleged promotional sales. In sum, Aowa failed to show any reversible error on the part of the CA in affirming the ruling of the DTI as to warrant the modification much less the reversal of its assailed decision.

APPEARANCES OF COUNSEL

Palaran & Partners Law Office for petitioner.
Office of the Legal Affairs (DTI) for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated June 23, 2009, which affirmed the resolution dated August 26, 2008[3] of the Department of Trade and Industry (DTI), Appeals Committee, sustaining the decision[4] dated April 10, 2008 of the DTI Adjudication Officer (Adjudication Officer).

The facts, as quoted by the CA from the Adjudication Officer's findings, are as follows:

> DTI-NCR's records show that numerous administrative complaints have been filed against Aowa Electronic Philippines, Inc. by different consumers, or a total of at least two hundred and seventy-three (273) from the year 2001 until 2007. The facts narrated in the said complaints consistently contain a common thread, as follows:
>
> - A target customer is approached by Aowa's representatives, usually in a mall and informs the former that he/she has won a gift or is to receive some giveaways. In certain cases, when the target customer expresses interest in the said "gift" or giveaway, Aowa's representatives then verbally reveal that the same can only be claimed or received upon purchase of an additional product or products, which are represented to be of high quality. However, consumer complainants allege that such products are substantially priced.
> - An initial gift is offered to the target customer, and upon acceptance, the customer is invited to [Aowa's] store/outlet. It is at that point that the customer is informed that he/she has qualified for a raffle draw or contest, entitling them to

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[1] *Rollo*, pp. 11-32.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring; *id.* at 36-52.

[3] *Id.* at 54-58.

[4] *Id.* at 59-66.

claim an additional "gift." In the same manner, such additional gift can be received only upon the purchase of additional products, also represented to be of high quality, and sometimes similarly alleged to be substantially charged.

- [In] the course of enticing the target customer to purchase the additional product, they are physically surrounded by Aowa's representatives, otherwise known to many as "ganging up" o[n] customers.
- Although the customer is required to purchase an additional product to claim the offered "gift/s," this is not disclosed during the initial stages of the sales pitch. The revelation is only done when the target customer is being surrounded by Aowa's representatives within its showroom/store/outlet.
- In some cases, when customers state that they are short of cash, [Aowa's] representatives urge said customers to use their credit card or to withdraw from an Automated Teller Machine (ATM). There are even instances where [Aowa's] representatives accompany a customer to his/her residence, where the latter can produce their (sic) means of payment.

In view thereof, DTI-NCR filed a Formal Charge against AOWA for violation of Articles 50 and 52 of the Consumer Act of the Philippines, praying that a Cease and Desist Order be issued, and [an] administrative fine be imposed, and other reliefs or remedies be granted as may be just and equitable under the circumstances.[5]

The CA further narrates:

When asked to Answer, AOWA denied having violated the provisions of the Consumer Act. A notice of preliminary conference was thereafter issued, giving the parties to find (sic) ways and means to expedite the proceedings, but the scheduled preliminary conference had to be terminated, as the proposal to enter into a plea bargain agreement did not ensue. As a consequence thereof, both parties were required to submit their respective position papers.

Meanwhile, a Preventive Measure Order (PMO) was issued by the DTI in order to prohibit AOWA from continuing with the act complained of until such time that a sale promotion permit is secured or obtained from the DTI.

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[5] *Supra* note 2, at 37-39.

In their position paper, AOWA vehemently denied committing any violation of the provisions of the Consumer Act as it does not employ the marketing scheme described in the formal charge. AOWA argued that the mere filing of the consumer complaint does not prove outright that an offense has been committed by it, meaning that it is not a conclusive proof that it is violating the law it is charged of. It stressed that all of the consumer complaints against it have not prospered, as the cases have been amicably settled. In addition, majority of the consumer complaints which served as basis for the filing of the formal charge are already deemed barred by prescription. As far as it is concerned therefore, AOWA claims that the complaint[s are] based on mere assumption and not on established facts.[6]

On April 10, 2008, after considering the arguments of petitioner Aowa Electronic Philippines, Inc. (Aowa) and respondent DTI-National Capital Region (NCR), the Adjudication Officer found that the complaints against Aowa continued to increase despite its claims of amicable settlement. He also found that Aowa submitted no proof of such amicable settlement. Based on the numerous complaints against Aowa, the Adjudication Officer held that the DTI had sufficiently established *prima facie* evidence against Aowa for violation of the applicable provisions of Republic Act (R.A.) No. 7394, or the Consumer Act of the Philippines (the Consumer Act), and its Implementing Rules and Regulations (IRR). Furthermore, the Adjudication Officer highlighted that Aowa failed to secure any Sales Promotion Permit from the DTI for Aowa's alleged promotional sales. Thus, he ruled:

WHEREFORE, foregoing premises considered, and by virtue of the power and mandate vested in this Department, to promote and encourage fair, honest and equitable relations among parties in consumer transactions and protect the consumer against deceptive, unfair and unconscionable sales act or practices, [Aowa] is hereby declared liable under the Consumer Act of the Philippines and the Rules and Regulations Implementing the same.

As a consequence thereof, it is hereby ordered, that —

a) [Aowa] must permanently cease and desist from operating its business in all its stores/outlets nationwide;

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

b) [Aowa's] Certificates of Business Name Registration for all its stores/outlets applying the sales scheme in question be cancelled;

c) [Aowa's] application for the registration of the same or another business name be withheld by DTI if the nature thereof is the same as that mentioned in this case;

d) [Aowa] must pay and/or refund to those who filed administrative complaint[s] with any DTI Office, the amount of money paid in consideration for the purchase of products sold in [Aowa's] stores/outlets as a precondition to the claim of the gift/ reward promised to be given to said complainants[; and]

e) [Aowa] must pay a one time Administrative Fine of Three Hundred Thousand Pesos (₱300,000.00), Philippine currency, either in cash or in the form of Company or Manager's check, at the DTI Cashier's Office, 4th Floor, Trade and Industry Building, 361 Sen. Gil Puyat Ave., Makati City.

Let a copy of this Decision be furnished to all Heads of DTI Provincial and Area Offices who are hereby directed to disseminate copies hereof to the Heads of Business Permit Bureau/Division of the different municipalities or cities within their respective jurisdictions for their appropriate action.

SO ORDERED.[7]

Aggrieved, Aowa sought recourse from the DTI Appeals Committee, ascribing grave abuse of discretion to the Adjudication Officer.

On August 26, 2008, the DTI Appeals Committee dismissed Aowa's appeal and sustained the Adjudication Officer's decision. It held that the techniques and schemes employed by Aowa were fraudulent, as they were being used as a bait to lure customers into buying its products. The DTI Appeals Committee noted that Aowa's act of giving gifts and prizes to its prospective customers in order to entice the latter to enter Aowa's store and to purchase its products is a common thread in every complaint lodged against Aowa before the DTI.[8]

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[7] *Supra* note 4, at 65-66.

[8] *Supra* note 3.

Unperturbed, Aowa filed a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure before the CA. On June 23, 2009, the CA affirmed the findings and ruling of the DTI Appeals Committee. The CA heavily relied on the findings of the Adjudication Officer and the DTI Appeals Committee, showing that Aowa committed acts of misrepresentation against its customers, clearly violative of the Consumer Act. Likewise, the CA affirmed the lower agencies' findings that Aowa indeed did not secure any Sales Promotion Permit for its promotional sales.[9]

Unyielding, Aowa filed its motion for reconsideration, which the CA, however, denied in its Resolution[10] dated September 29, 2009.

Hence, this petition based on the following grounds:

[I.] WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THERE IS SUFFICIENT BASIS IN THE FILING OF THE FORMAL CHARGE AGAINST HEREIN PETITIONER NOTWITHSTANDING THE FACT THAT THE SAID FORMAL CHARGE WAS MERELY BASED ON CONSUMER COMPLAINTS WHICH HAVE *ALL* BEEN AMICABLY SETTLED AND DISMISSED. MOREOVER, THE HEREIN RESPONDENT DOES NOT HAVE ANY PERSONAL KNOWLEDGE OF THE CIRCUMSTANCES SURROUNDING ALL THE CONSUMER COMPLAINTS FILED AGAINST THE PETITIONER[;]

[II.] WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE HARSH AND EXCESSIVE DECISION OF THE DEPARTMENT OF TRADE AND INDUSTRY, APPEALS COMMITTEE ORDERING THE HEREIN PETITIONER TO PERMANENTLY CEASE AND DESIST FROM OPERATING ITS BUSINESS AND IN ADDITION TO PAY THE MAXIMUM FINE PROVIDED UNDER THE LAW NOTWITHSTANDING THE FACT THAT THE FORMAL CHARGE IS NOT SUPPORTED BY ANY CONCRETE, SUFFICIENT AND CONVINCING EVIDENCE[; AND]

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[9] *Supra* note 2.

[10] *Rollo*, pp. 68-69.

[III.] WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ITS RULING THAT THE ASSAILED RESOLUTION'S ORDER MAY BE ENFORCED NATIONWIDE DESPITE THE FACT THAT THE COMPLAINT PERTAINS TO CASES IN THE NATIONAL CAPITAL REGION ONLY[.][11]

Aowa claims that the complaints filed against it merely pertain to cases in the NCR, hence, there was no basis for the DTI to presume that the alleged offenses committed by petitioner are likewise practiced in other places in the country; that DTI never denied Aowa's averment that the cases filed against it by customers were already and actually settled; that the mere filing of numerous complaints does not prove outright that an offense has been committed; and that the complaints were based on mere assumptions and not on established facts. Moreover, Aowa's act of amicably settling the cases with the consumer-complainants manifests Aowa's good faith and fair dealing with its patrons, not commensurate with the penalty of closure and the maximum fine imposed by the DTI. Finally, Aowa denies that it committed fraud and/or deceit in violation of the Consumer Act. Good faith must always be presumed. Aowa postulates that like other companies, its sales personnel are employed to convince potential customers to purchase the products they are selling, inclusive of enthusiasm in sales talk and overzealousness which cannot and should not be considered as deceit. Customers in this case were never deprived of their prerogative to refuse the offer of the sales agents of Aowa, as the terms and conditions of the sale were fully explained to all of its customers.[12]

On the other hand, the DTI, through the Office of the Solicitor General (OSG), claims that there is sufficient basis for the filing of the formal charge against petitioner; that through Assistant Secretary Ma. Theresa L. Pelayo, acting as Regional Caretaker, it filed the formal charge against Aowa based on the numerous complaints filed against the latter and pursuant to Article 159[13]

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[11] *Supra* note 1, at 20-21.

[12] *Id.*

[13] Article 159 of the Consumer Act provides, to wit:

of the Consumer Act; that said complaints constituted *prima facie* violation of the Consumer Act; that, as such, Aowa has the burden to overcome the presumption by proof to the contrary; and that Aowa, however, failed to discharge the said burden. The OSG argues that, contrary to Aowa's assertion, the amicable settlement allegedly entered by Aowa and its consumer-complainants is not a ground for the dismissal of the formal charge because Aowa, despite respondent's issuance of a Preventive Measure Order[14] (PMO) on July 31, 2009, continues to enter and engage in the same acts and/or transactions complained of. Consonant with the findings of the lower agencies and the CA, the OSG asseverates that Aowa, after it was afforded its right to due process, was correctly found liable for violation of the Consumer Act through misrepresentation, and for its failure to secure any Sales Promotion Permit from the DTI. Moreover, the directive of the Adjudication Officer of closure and imposition of the maximum fine of ₱300,000.00 is in accordance with law and its IRR.[15]

Correlatively, Aowa assailed the validity of the PMO with the Regional Trial Court (RTC) of Makati City, Branch 143, docketed as Civil Case No. 09-723. The RTC, however, dismissed the case for lack of jurisdiction. Unyielding, in a Petition for

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ART. 159. *Consumer Complaints*. — The concerned department may commence an investigation upon petition or upon letter-complaint from any consumer: *Provided*, That, upon a finding by the department of a *prima facie* violation of any provisions of this Act or any rule or regulation promulgated under its authority, it may *motu proprio* or upon verified complaint commence formal administrative action against any person who appears responsible therefor. The department shall establish procedures for systematically logging in, investigating and responding to consumer complaints into the development of consumer policies, rules and regulations, assuring as far as practicable simple and easy access on the part of the consumer to seek redress for his grievances.

[14] Entitled "*Department of Trade and Industry-National Capital Region, Hon. Vice-President Manuel 'Noli' de Castro and Jesse Hermogenes T. Andres v. Aowa Electronics Philippines, Inc., Home Depot Macapagal Avenue, Pasay City,*" particularly docketed as Adm. Case No. 09-186; *rollo*, pp. 152-153.

[15] *Id.* at 132-149.

Prohibition, Aowa went to the CA which, in its Resolution[16] dated October 27, 2009, dismissed Aowa's case for its failure to file the petition within the prescribed period. The said CA Resolution became final and executory on January 28, 2010.[17]

In a Manifestation,[18] the counsel of Aowa intimated that Aowa no longer intends to file a reply to the OSG's Comment, on the ground that the discussions made therein had already been addressed in the instant Petition. Counsel, however, also intimated that Aowa left its known office address without informing him of the location of its new office.

The sole issue in this case is whether or not the CA committed any reversible error in affirming the findings and ruling of the Adjudication Officer and the DTI Appeals Committee.

The Petition is bereft of merit.

Contrary to Aowa's postulations, the DTI has the authority and the mandate to act upon the complaints filed against Aowa. Article 2 of the Consumer Act clearly sets forth the policy of the State on consumer protection, *viz.*:

> ART 2. *Declaration of Basic Policy*. — It is the policy of the State to protect the interests of the consumer, promote his general welfare and to establish standards of conduct for business and industry. Towards this end, the State shall implement measures to achieve the following objectives:
>
> a) protection against hazards to health and safety;
> b) protection against deceptive, unfair and unconscionable sales acts and practices;
> c) provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer;
> d) provision of adequate rights and means of redress; and
> e) involvement of consumer representatives in the formulation of social and economic policies.

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[16] *Id.* at 176-177.

[17] *Id.* at 178.

[18] *Id.* at 193-195.

This policy is reiterated in Article 48 of the Consumer Act, which provides that "*the State shall promote and encourage fair, honest and equitable relations among parties in consumer transactions and protect the consumer against deceptive, unfair and unconscionable sales acts or practices*." Verily, as espoused by the OSG, the DTI validly invoked Article 159 of the Consumer Act in order to effectuate this policy of the State by filing a formal charge against Aowa. It is indubitable that the DTI is tasked to protect the consumer against deceptive, unfair, and unconscionable sales, acts, or practices, as defined in Articles 50 and 52 of the Consumer Act.[19]

The law is clear. Articles 50 and 52 of the Consumer Act provide:

ART. 50. *Prohibition Against Deceptive Sales Acts or Practices*. — A deceptive act or practice by a seller or supplier in connection with a consumer transaction violates this Act whether it occurs before, during or after the transaction. An act or practice shall be deemed deceptive whenever the producer, manufacturer, supplier or seller, through concealment, false representation [or] fraudulent manipulation, induces a consumer to enter into a sales or lease transaction of any consumer product or service.

Without limiting the scope of the above paragraph, the act or practice of a seller or supplier is deceptive when it represents that:

a) a consumer product or service has the sponsorship, approval, performance, characteristics, ingredients, accessories, uses, or benefits it does not have;
b) a consumer product or service is of a particular standard, quality, grade, style, or model when in fact it is not;
c) a consumer product is new, original or unused, when in fact, it is in a deteriorated, altered, reconditioned, reclaimed or second-hand state;
d) a consumer product or service is available to the consumer for a reason that is different from the fact;
e) a consumer product or service has been supplied in accordance with the previous representation when in fact it is not;

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[19] *Islamic Da'wah Council of the Phils., Inc. v. Office of the Executive Secretary*, 453 Phil. 440, 451-452 (2003).

f) a consumer product or service can be supplied in a quantity greater than the supplier intends;
g) a service, or repair of a consumer product is needed when in fact it is not;

h) a specific price advantage of a consumer product exists when in fact it does not;

i) the sales act or practice involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms or other rights, remedies or obligations if the indication is false; and

j) the seller or supplier has a sponsorship, approval, or affiliation he does not have.

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ART. 52. *Unfair or Unconscionable Sales Act or Practice*. — An unfair or unconscionable sales act or practice by a seller or supplier in connection with a consumer transaction violates this Chapter whether it occurs before, during or after the consumer transaction. An act or practice shall be deemed unfair or unconscionable whenever the producer, manufacturer, distributor, supplier or seller, by taking advantage of the consumer's physical or mental infirmity, ignorance, illiteracy, lack of time or the general conditions of the environment or surroundings, induces the consumer to enter into a sales or lease transaction grossly inimical to the interests of the consumer or grossly one-sided in favor of the producer, manufacturer, distributor, supplier or seller.

In determining whether an act or practice is unfair and unconscionable, the following circumstances shall be considered:

a) that the producer, manufacturer, distributor, supplier or seller took advantage of the inability of the consumer to reasonably protect his interest because of his inability to understand the language of an agreement, or similar factors;

b) that when the consumer transaction was entered into, the price grossly exceeded the price at which similar products or services were readily obtainable in similar transaction by like consumers;

c) that when the consumer transaction was entered into, the consumer was unable to receive a substantial benefit from the subject of the transaction;

d) that when the consumer transaction was entered into, the seller or supplier was aware that there was no reasonable probability or payment of the obligation in full by the consumer; and

e) that the transaction that the seller or supplier induced the consumer to enter into was excessively one-sided in favor of the seller or supplier.

It cannot be gainsaid that the DTI acted on the basis of about 273 consumer complaints against Aowa, averring a common and viral scheme in carrying out its business to the prejudice of consumers. Complaints — filed by consumers residing not only within the NCR but also in the provinces[20] — continued to be filed even after the formal charge and the issuance of the PMO. In this regard, we quote with affirmation and accord respect to the factual findings of the CA, to wit:

[Aowa], in employing the sales scheme described by customers in their complaints in order to entice customers to purchase [its] products clearly violated Article 52 of the Consumer Act of the Philippines. As found by public respondent DTI whose findings We heretofore adopt:

"It is undisputed that the techniques/scheme employed by [Aowa] were fraudulently (sic) considering that the same were being used as a bait to lure customers into buying it products. [Aowa's] customary act of giving gifts and the so called prizes to its prospective customers in order to entice them to enter the store outlet and later convincing (sic) them to purchase the products [it is] selling are (sic) but common trends (sic) that occurred in every complaint lodged against [Aowa] before the DTI-NCR and regional offices. In such manner, it is evident that the said scheme is actually the means by which [Aowa] operates its business. Simply, it is intrinsically connected to the business itself of and had [Aowa] not employed those techniques, customers would not have transacted with it."

[20] *Rollo,* pp. 167-175.

> In doing so, [Aowa], as seller, through its representatives stationed usually in malls, entice consumers into purchasing their products by taking advantage of the latter's physical or mental infirmity, ignorance, illiteracy, lack of time or the general conditions of the environment or surroundings. This is done by misrepresenting to the consumer that he/she has won a gift or is to receive some giveaways when in truth, these gifts can only be claimed or received upon purchase of an additional product or products, again misrepresented by [Aowa to] be of high quality. This is how [Aowa] operates its business, and not simply as a means of promotional sale. The act sought to be avoided and punished under the Consumer Act has clearly been committed by Aowa.[21]

By reason of the special knowledge and expertise of the DTI over matters falling under its jurisdiction, it is in a better position to pass judgment on the issues, and its findings of fact in that regard, especially when affirmed by the CA, are generally accorded respect, if not finality, by this Court.[22] Furthermore, Aowa failed to refute DTI's finding that it did not secure any permit for its alleged promotional sales. In sum, Aowa failed to show any reversible error on the part of the CA in affirming the ruling of the DTI as to warrant the modification much less the reversal of its assailed decision.

A final note.

In these trying times when fly-by-night establishments and syndicates proliferate all over the country, lurking and waiting to prey on innocent consumers, and ganging up on them like a pack of wolves with their sugar-coated sales talk and false representations disguised as "overzealous marketing strategies," it is the mandated duty of the Government, through its various agencies like the DTI, to be wary and ready to protect each and every consumer. To allow or even tolerate the marketing schemes such as these, under the pretext of promotional sales in contravention of the law and its existing rules and regulations,

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[21] *Supra* note 2, at 45-46.

[22] *Metal Forming Corp. v. Office of the President*, 317 Phil. 853, 861 (1995).

would result in consumers being robbed in broad daylight of their hard earned money. This Court shall not countenance these pernicious acts at the expense of consumers.

WHEREFORE, the Petition is *DENIED* and the Court of Appeals Decision dated June 23, 2009 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190487. April 13, 2011]

BUREAU OF CUSTOMS, *petitioner, vs.* **PETER SHERMAN, MICHAEL WHELAN, TEODORO B. LINGAN, ATTY. OFELIA B. CAJIGAL and the COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; ALL CRIMINAL ACTIONS COMMENCED BY COMPLAINT OR INFORMATION ARE PROSECUTED UNDER THE DIRECTION AND CONTROL OF PUBLIC PROSECUTORS. — It is well-settled that prosecution of crimes pertains to the executive department of the government whose principal power and responsibility is to insure that laws are faithfully executed. Corollary to this power is the right to prosecute violators. All criminal actions commenced by complaint or information are prosecuted under the direction and control of public prosecutors. In the prosecution of special laws, the exigencies of public

service sometimes require the designation of special prosecutors from different government agencies **to assist** the public prosecutor. The designation does not, however, detract from the public prosecutor having control and supervision over the case.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT COMMITTED BY THE COURT OF TAX APPEALS IN CASE AT BAR. — By merely noting without action petitioner's motion for reconsideration, the CTA did not gravely abuse its discretion. For, as stated earlier, a public prosecutor has control and supervision over the cases.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; OFFICE OF THE SOLICITOR GENERAL; MANDATED TO REPRESENT THE GOVERNMENT, ITS AGENCIES AND INSTRUMENTALITIES AND ITS OFFICIALS AND AGENTS IN ANY LITIGATION, PROCEEDING, INVESTIGATION, OR MATTER REQUIRING THE SERVICES OF LAWYERS; CONTRAVENED IN CASE AT BAR. — [P]etitioner is not represented by the Office of the Solicitor General (OSG) in instituting the present petition, which contravenes established doctrine that "the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers."

APPEARANCES OF COUNSEL

Christopher F.C. Bolastig for petitioner.
Romeo C. Dela Cruz & Associates for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Mark Sensing Philippines, Inc. (MSPI) caused the importation of 255, 870,000 pieces of finished bet slips and 205, 200 rolls of finished thermal papers from June 2005 to January 2007. MSPI facilitated the release of the shipment from the Clark Special Economic Zone (CSEZ), where it was brought, to the

Philippine Charity Sweepstakes Office (PCSO) for its lotto operations in Luzon. MSPI did not pay duties or taxes, however, prompting the Bureau of Customs (petitioner) to file, under its Run After The Smugglers (RATS) Program, a criminal complaint before the Department of Justice against herein respondents MSPI Chairman Peter Sherman, Managing Director Michael Whelan, Country Manager Atty. Ofelia B. Cajigal and Finance Manager and Corporate Secretary Teodoro B. Lingan, along with Erick B. Ariarte and Ricardo J. Ebuna and Eugenio Pasco, licensed customs broker who acted as agents of MSPI, for violation of Section 3601[1] *vis-à-vis* Sections 2530 (f) and (l) 5[2] and 101

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[1] Section 3601. *Unlawful Importation*. — Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to be have been imported contrary to law shall be guilty of smuggling and shall be punished with:

x x x x x x x x x

In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

When upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That the payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

[2] Section 2530. Property Subject to Forfeiture under Tariff and Customs Laws — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:

x x x x x x x x x

(f) Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation of exportation of the former:

(l) Any article sought to be imported or exported:

(f)[3] of the Tariff and Customs Code of the Philippines, as amended and Republic Act No. 7916.[4]

State Prosecutor Rohaira Lao-Tamano, by Resolution of March 25, 2008,[5] found probable cause against respondents and accordingly recommended the filing of Information against them.

Respondents filed a petition for review[6] before the Secretary of Justice during the pendency of which the Information was filed on April 11, 2009 before the Court of Tax Appeals (CTA),[7] the accusatory portion of which reads:

That on or about June 2005 to December 2007, in Manila City, and within the jurisdiction of this Honorable Court, the above named accused, in conspiracy with one another, made forty (40) unlawful importations of 255, 870 pieces of finished printed bet slips and 205, 200 rolls of finished thermal papers from Australia valued at approximately One Million Two Hundred Forty Thousand Eight Hundred Eighty US Dollars & Fourteen Cents (US$1,240,880.14), and caused the removal of said imported articles from the Clark Special Economic Zone and delivery thereof to the Philippine Charity Sweepstakes Offices without payment of its corresponding duties and taxes estimated at around Fifteen Million Nine Hundred Seventeen Thousand Six Hundred Eleven Pesos and Eighty Three Cents

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x x x x x x x x x

5. Through any other practice or device contrary to law by means of which such article was entered through a customhouse to the prejudice of the government.

[3] Section 101. Prohibited Importations. — The importation into the Philippines of the following articles is prohibited:

x x x x x x x x x

(f) Lottery and sweepstakes tickets except those authorized by the Philippine Government, advertisements thereof and list of drawings therein.

[4] Otherwise known as the SPECIAL ECONOMIC ZONE ACT of 1995.

[5] *Rollo*, pp. 375-386.

[6] *Id.* at 394-413.

[7] The Court of Tax Appeals Second Division is composed of Associate Justices Juanito C. Castañeda (Chairperson), Erlinda P. Uy and Olga Palanca-Enriquez.

(Php15,917,611.83) in violation of Section 3601 in relation to Sections 2530 and 101 paragraph (f) of the Tariff and Customs Code of the Philippines to the damage and prejudice of herein complainant.

CONTRARY TO LAW.[8]

Only respondents Cajigal and Lingan were served warrants of arrest following which they posted cash bail bonds.

By Resolution of March 20, 2009,[9] the Secretary of Justice *reversed* the State Prosecutor's Resolution and accordingly directed the withdrawal of the Information.

Petitioner's motion for reconsideration having been denied by Resolution of April 29, 2009,[10] it elevated the case by *certiorari* before the Court of Appeals, docketed as CA GR SP No. 10-9431.[11]

In the meantime, Prosecutor Lao-Tamano filed before the CTA a Motion to Withdraw Information with Leave of Court[12] to which petitioner filed an Opposition.[13] Respondents, on their part, moved for the dismissal of the Information.

The CTA, by the herein assailed Resolution of September 3, 2009,[14] granted the withdrawal of, and accordingly dismissed the Information.

Petitioner's motion for reconsideration filed on September 22, 2009[15] was Noted Without Action by the CTA by Resolution of October 14, 2009, *viz*:

Considering that an Entry of Judgment was already issued in this case on September 23, 2009, **no Motion** for Reconsideration of

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[8] *Rollo*, pp. 387-388.

[9] *Id.* at 414-418.

[10] *Id.* at 424-425.

[11] *Id.* at 426-462.

[12] *Id.* at 463-469.

[13] *Id.* at 470-473.

[14] *Id.* at 27-38.

[15] *Ibid.*

the Resolution dated September 3, 2009 having been **filed by State Prosecutor Rohairah Lao-Tamano** of the Department of Justice; the "Motion for Reconsideration of the Resolution dated 3 September 2009" filed on September 22, 2009 by Atty. Christopher F.C. Bolastig of the Bureau of Customs is **NOTED, without action**.

SO ORDERED.[16] (emphasis partly in the original and partly supplied)

Hence, petitioner's present petition for *certiorari*.[17]

The petition is bereft of merit.

It is well-settled that prosecution of crimes pertains to the executive department of the government whose principal power and responsibility is to insure that laws are faithfully executed. Corollary to this power is the right to prosecute violators.[18]

All criminal actions commenced by complaint or information are prosecuted under the direction and control of public prosecutors.[19] In the prosecution of special laws, the exigencies of public service sometimes require the designation of special prosecutors from different government agencies **to assist** the public prosecutor. The designation does not, however, detract from the public prosecutor having control and supervision over the case.

As stated in the above-quoted *ratio* of the October 14, 2009 Resolution of the CTA, it noted without action petitioner's motion for reconsideration, entry of judgment having been made as no Motion for Execution was filed by the State Prosecutor.

By merely noting without action petitioner's motion for reconsideration, the CTA did not gravely abuse its discretion. For, as stated earlier, a public prosecutor has control and supervision over the cases. The participation in the case of a

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[16] *Id.* at 40.

[17] *Id.* at 2-24.

[18] *Webb v. De Leon*, G.R. No. 121234, August 23, 1995, 247 SCRA 652, 685.

[19] RULES OF COURT, Rule 110, Sec. 5.

private complainant, like petitioner, is limited to that of a witness, both in the criminal and civil aspect of the case.

Parenthetically, petitioner is not represented by the Office of the Solicitor General (OSG) in instituting the present petition, which contravenes established doctrine[20] that "the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers."[21]

IN FINE, as petitioner's motion for reconsideration of the challenged CTA Resolution did not bear the imprimatur of the public prosecutor to which the control of the prosecution of the case belongs, the present petition fails.

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-05-1970. May 30, 2011]
(Formerly A.M. OCA I.P.I. No. 04-1962-P)

AN ANONYMOUS COMPLAINT AGAINST ATTY. PORTIA DIESTA, BRANCH CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH 263, PASIG CITY and LUZ SANTOS-TACLA, CLERK III, SAME COURT.

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[20] *Ong v. Genio,* G.R. No. 182336, December 23, 2009, 609 SCRA 188, 194.

[21] Citing Section 35 (1), Chapter 12, Title III, Book IV of the Administrative Code of 1987.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; LOSING THE ATTENDANCE LOGBOOK CONSTITUTES SIMPLE NEGLECT OF DUTY; ASKING FOR COMMISSIONER'S FEE, FAILURE TO CAUSE THE PUBLICATION OF OFFICIAL NOTICES RAFFLED, AND FAILURE TO ACCOMPLISH DAILY TIME RECORD ARE ACTS CONSTITUTING SIMPLE MISCONDUCT; PENALTY. — We agree with the OCA finding that both Atty. Diesta and Tacla are guilty of the charges against them. However, we do not agree with the OCA recommendation that Atty. Diesta and Tacla be only reprimanded with stern warning that commission of similar acts in the future shall be dealt with more severely. Both are guilty of less grave offenses and must be meted the corresponding penalties. Atty. Diesta is guilty of simple neglect of duty for losing the attendance logbook and is also guilty of simple misconduct for asking for a commissioner's fee and for failing to have the publication of official notices raffled. She should be suspended for three (3) months. Tacla, who is guilty of simple misconduct for not faithfully accomplishing her daily time record, should be suspended for one (1) month and one (1) day.

R E S O L U T I O N

BRION, *J.*:

We resolve in this Resolution the complaint against Atty. Portia Flores-Diesta, Branch Clerk of Court, and Luz Santos-Tacla, Clerk III, of the Regional Trial Court, Branch 263 (*Branch 263*), Pasig City.

Background Facts

On April 20, 2004, the Office of the Court Administrator (*OCA*) received an undated anonymous letter complaint[1] against Atty. Diesta and Tacla alleging dishonesty, conduct prejudicial to the best interest of the service, and violation of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act).

[1] *Rollo*, pp. 6-9.

In the letter, the anonymous writer charged Atty. Diesta of not reporting for work on time, of collecting commissioner's fees for *ex parte* hearings, of not subjecting to raffle the publication of cases and judicial notices, and of illegally practicing law by appearing in court for his practitioner-father. Tacla, on the other hand, was charged of being tardy and being frequently absent, of falsifying her entry in the attendance logbook and on her daily time record, and of acting as "runner" for Atty. Diesta. The supporting documents were attached to the letter-complaint.

The OCA required Atty. Diesta and Tacla to comment on this letter.[2] Atty. Diesta filed her comment on August 9, 2004,[3] while Tacla filed her comment on August 10, 2004.[4] Both Atty. Diesta and Tacla denied the allegations.

The OCA, after a review of the respondents' comments and the result of its discreet investigation, recommended that the case be redocketed as a regular administrative matter and referred the case to the Executive Judge of the Pasig City RTC for investigation, report and recommendation. On January 31, 2005, the Court issued a Resolution adopting the OCA recommendation.[5]

Pasig City RTC Executive Judge Edwin A. Villasor conducted several hearings. He summoned the two respondents, the staff of Branch 263, and Atty. Jaime del Rosario who was alleged to have been asked by Atty. Diesta for a commissioner's fee. The two respondents (represented by their lawyers) and the court staff testified before Judge Villasor and were duly cross-examined. Atty. Del Rosario failed to appear.

In his October 19, 2005 exhaustive report to the OCA,[6] Judge Villasor summarized the allegations against Atty. Diesta, as follows:

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

[3] *Id*. at 35-41.

[4] *Id*. at 81-84.

[5] *Id*. at 91.

[6] *Id*. at 557-586.

(1) always late in reporting for work, left the office early, and could not complete the whole week without being absent;
(2) tolerated the infractions of the Clerk In-Charge of Criminal Cases who was allegedly the "runner" when there were transactions concerning bonds and publications;
(3) publication of cases or judicial notices were not raffled, but, instead, were assigned to "the Courier";
(4) appeared in cases, particularly in Quezon City and in San Mateo, Rizal, for her practitioner-father; and
(5) asked for a commissioner's fee according to a Private Practitioner, Atty. del Rosario.

Judge Villasor reported that Atty. Diesta lost the attendance logbook of Branch 263 covering the dates relevant to the charges against her and Tacla, that she asked for a commissioner's fee from Atty. Del Rosario, and that she was amenable to receiving "token" amounts from lawyers.

He summarized the allegations against Tacla as follows:

(1) that she was the "runner" of the Branch Clerk of Court when there were transactions concerning bonds and publications entered into by the former;
(2) that her name did not appear in the attendance logbook, which meant that she did not report for work, but her DTR showed that she reported for work on the days concerned; and
(3) that in the entry of September 2, 2003, she cheated on her time.

He found that Tacla falsified her entries in the attendance logbook.

Since the complaint was the first one for both Atty. Diesta and Tacla, Judge Villasor recommended that Atty. Diesta be reprimanded and admonished to exercise care in securing the attendance logbook and in performing her other official duties, and that Tacla be warned to be more careful in making entries in the official attendance logbook.

The OCA Report/Recommendation

The OCA submitted its Report, dated February 10, 2006,[7] with the following findings:

[7] *Id*. at 595-600.

Atty. Diesta denied that she was late or absent and alleged that she did not record her time of arrival to or departure from the office because she was not required to do so. She admitted that the attendance logbook of Branch 263 for the period of September 2003 to September 2004 is missing. She admitted that she had custody of the logbook and that she kept it in the filing cabinet behind her desk; it remained missing despite efforts to find it. The OCA found that the loss of the attendance logbook while in Atty. Diesta's custody was an indication that she was careless in her duty to keep it safe.

The OCA noted the statement of Lourdes Puzon, Clerk III in charge of civil cases. Ms. Puzon claimed that when there was a need for publication, she prepared an order for signature by the pairing judge of Branch 263 and after the order was signed, she submitted it to Atty. Diesta. Ms. Puzon claimed that after her submission of the signed order, she had no more knowledge on how the publication was done. Atty. Diesta contradicted this claim and maintained that after she received the signed order with the record of cases for publication, she gave it to the clerk-in-charge. She then presumed that the clerk would forward it to the Office of the Clerk of Court. According to the OCA, Atty. Diesta had the responsibility and duty as branch clerk of court to furnish the Office of the Clerk of Court with a copy of the signed order, citing Sections 10 and 11 of A.M. No. 01-1-07-SC.[8] The OCA also verified the records of the Office of the Clerk of Court and found that Branch 263 had not submitted for raffle any judicial notice or announcement for

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[8] "Guidelines in the accreditation of newspapers and periodicals seeking to publish judicial and legal notices and other similar announcements and in the raffle thereof." Section 10 provides: "All notices, announcements and advertisements x x x shall be distributed for publication to accredited newspapers or periodicals by raffle. No such notices, announcements and advertisements may be assigned for publication without being raffled." Section 11 provides: "Orders issued by judges in cases that require publication of any notice or notices shall include a directive to the Branch Clerk of Court instructing the latter to furnish the Office of the Clerk of Court with a copy of the order so that such notice may be published in accordance with the provisions of P.D. No. 1079."

publication.[9] The OCA found that Atty. Diesta violated A.M. No. 01-1-07-SC.

The OCA also stated that Ms. Puzon confirmed Atty. Del Rosario's manifestation before Judge Isagani Geronimo of Branch 263 that Atty. Del Rosario asked that the case be heard before the court, although it was set for *ex parte* hearing, because Atty. Diesta was charging him an amount that he could not justify to his client. This incident was corroborated by Julie Ann Berosil, former court interpreter of Branch 263.[10] An OCA investigator who interviewed Atty. Del Rosario also confirmed that the latter offered to pay Atty. Diesta ₱1,500.00 instead of the ₱3,500.00 that she was asking for.[11] Atty. Diesta, on the other hand, asserted that the matter involving Atty. Del Rosario was an isolated one and had already been resolved.

On the alleged "token" voluntarily given by lawyers, Atty. Diesta admitted in her July 18, 2005 comment that "In fact, when lawyers ask about the 'commissioner's fee,'" they are simply told that [its] collection x x x is prohibited. Even the stenographers concerned have repeatedly stressed this information to the lawyers. It cannot be denied though that there are lawyers who insist that it is but a 'token' and that they have set aside a budget for the same. In these instances, the matter is left to the discretion of the lawyer concerned. But, whatever amount is handed out, it is strictly VOLUNTARILY given and in no way was anyone ever forced, coerced or intimidated to make payments in exchange for the reception of their evidence."[12] The OCA, finding these statements disturbing, said: "*As frontliners in the administration and dispensation of justice, respondent Diesta is duty bound to uphold the integrity of the court. She should avoid the practice of accepting or tolerating such tokens, as it will deteriorate (sic) the entire judiciary's integrity*."[13]

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[9] *Rollo*, p. 89.

[10] *Id*. at 481-483.

[11] *Id*. at 89.

[12] *Id*. at 117.

[13] *Id*. at 599.

On the matter of Tacla's alleged cheating on her time record, the OCA reported Tacla's claim that she did not intend to cheat on her entries in the attendance logbook and that her watch stopped causing her to indicate the wrong time of her arrival on September 2, 2003.[14] She also maintained that she was not gallivanting during the times she was out of the office but was actually doing official work. She also denied that she was Atty. Diesta's "runner." The OCA found that Tacla's explanation that she was out on official business when her name did not appear in the attendance logbook was a disregard of the directive to faithfully accomplish the attendance logbook.

According to the OCA, public servants must at all times exhibit the highest sense of honesty and integrity, and their conduct must be above suspicion and characterized by propriety and decorum. The OCA recommended that Atty. Diesta and Tacla be reprimanded, with a stern warning that a commission of similar acts in the future shall be dealt with more severely.

The Court's Ruling

Ample evidence is on record to support the OCA's finding of Atty. Diesta and Tacla's culpability.

On the charges against Atty. Diesta, we note the affidavit of Lourdes Puzon:[15]

> 5. With respect to the allegations of a certain Atty. Jaime Del Rosario, I, together with the interpreter Julie Ann Berosil and two (2) Stenographers, Ms. Erlinda Verga and Fannie Magtibay were present. During the hearing wherein Atty. Del Rosario appeared as counsel for a certain civil case, he manifested before Hon. Judge Isagani A. Geronimo that his case is set for *ex-parte* presentation before the Branch Clerk of Court but he wanted his case to be heard before the Court because according to him, Atty. Diesta was charging him for a substantial amount.

Atty. Diesta also admitted that the attendance logbook was missing and that she had the duty as Branch Clerk of Court to keep it

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[14] *Id.* at 20.

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

in her custody.[16] The Joint Manifestation[17] of seven (7) members of the court staff reads:

> We, Loralei R. Victoria, Erlinda M. Verga, Fannie A. Magtibay, Lourdes Soriano, Sherwin Sansano, Alfonso Pe Benito, Jr., and Sotero Matias, all of legal ages and staffmembers of Branch 263, Regional Trial Court, Pasig City, jointly manifest to the Honorable Court that:
> 1) All logbooks containing entries of our arrival in and departure from the office are being kept in the filing cabinet of our office;
> 2) When the "anonymous complaint" was received by our Branch Clerk of Court sometime in July 2004, she asked for the logbook containing the entries pertinent to the complaint. However, the said logbook was not in the filing cabinet anymore;
> 3) Despite efforts to locate the logbook, the same could no longer be found.
>
> We are executing this joint manifestation for the information of the Honorable Court.

There is also sufficient evidence to support the charges that Atty. Diesta asked for commissioner's fee from Atty. Del Rosario and that the publications of judicial notices in Branch 263 were not submitted for raffle.

Tacla's logbook entries for September 1, 8, 16, 22 and 29, 2003,[18] and the entries on her daily time record for the month of September 2003[19] were markedly different. The deviations were noted by an OCA investigator who checked the records of the OCA Leave Division.[20]

The Revised Manual for Clerks of Court provides:

> 1.2 Attendance Records (Memo, Circular No. 4, June 15, 1973)
>
> 1.2.1. Registry Book — Each Court shall provide itself with a registry book with which to indicate the time in coming to and leaving the office of its personnel.

[16] *Id*. at 500-503.

[17] *Id*. at 339.

[18] *Id*. at 10, 13, 15, 18, and 20.

[19] *Id*. at 29.

[20] *Id*. at 89.

1.2.2 Daily Time Record (CS Form 48) — In addition, each personnel must be required to accomplish CS Form 48. The time appearing in Form 48 should tally with the time recorded in the registry book.

Clerks of Court are not required to keep daily time records of their attendance, in lieu thereof, the said officials are required to submit a certification of service within the period under pain of having their salaries withheld (Ruling of the Commissioner of Civil Service, 1st Indorsement, November 7, 1970, re: proper interpretation of Civil Service Rule XV, Sec. 4.)

1.2.3. The Clerks of Court are held responsible for the custody and reliability of the time recorded in the registry book. These daily time records (Form 48) must be duly certified by the Judge or the Clerk of Court before they are sent to the proper authorities. (Underlining supplied)

Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292[21] provides that administrative offenses are classified into grave, less grave and light, depending on the gravity of the nature of the act complained of. The less grave offenses of simple neglect of duty and of simple misconduct carry the penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense.

We agree with the OCA finding that both Atty. Diesta and Tacla are guilty of the charges against them. However, we do

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[21] Sec. 23. Administrative offenses with its (sic) corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its (sic) nature and effect of said acts on the government service.

x x x x x x x x x

The following are less grave offenses with its (sic) corresponding penalties:

(a) Simple Neglect of Duty

1st Offense — Suspension for one (1) month and one (1) day to six (6) months. . .

(b) Simple Misconduct

1st Offense — Suspension for one (1) month and one (1) day to six (6) months. . .

not agree with the OCA recommendation that Atty. Diesta and Tacla be only reprimanded with stern warning that commission of similar acts in the future shall be dealt with more severely. Both are guilty of less grave offenses and must be meted the corresponding penalties. Atty. Diesta is guilty of simple neglect of duty for losing the attendance logbook and is also guilty of simple misconduct for asking for commissioner's fee and for failing to have the publication of official notices raffled. She should be suspended for three (3) months. In view of Atty. Diesta's resignation on March 9, 2010, the penalty of suspension can no longer be imposed. In lieu of this penalty, she is fined the amount of Twenty Thousand Pesos (₱20,000.00), to be deducted from whatever amount is due her as a result of her separation from the service.

With respect to Tacla, who is found guilty of simple misconduct for not faithfully accomplishing her daily time record and is suspended for one (1) month and one (1) day.

WHEREFORE, premises considered, Atty. Portia Diesta is found guilty of simple neglect of duty and simple misconduct and is *FINED* the amount of Twenty Thousand (₱20,000.00), to be deducted from whatever amount is due her as a result of her separation from the service. Luz Santos-Tacla, Clerk III, of Pasig RTC, Branch 263, is found guilty of simple misconduct, and is *SUSPENDED* for one (1) month and one day with a *STERN WARNING* that a commission of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-11-2919. May 30, 2011]
(Formerly OCA I.P.I. No. 08-2699-P)

JUDGE ROWENA NIEVES A. TAN, *complainant, vs.* **ERNESTO C. QUITORIO, Legal Researcher, Regional Trial Court, Branch 2, Borongan, Eastern Samar,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT; DEFINED; WHEN CONSIDERED GRAVE. — Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, all of which must be established by substantial evidence, and must necessarily be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.

2. ID.; ID.; ID.; ID.; INFORMING A PARTY IN A CASE ABOUT THE SUBMISSION OF A DRAFT RESOLUTION IS VIOLATIVE OF THE CONFIDENTIALITY REQUIRED OF COURT PERSONNEL. — Quitorio's admission that he informed Dadulla about the submission of his draft resolution with advice to follow it up with Judge Tan in her sala is violative of the confidentiality required of court personnel. Section 1, Canon II of the New Code of Judicial Conduct for Court Personnel. x x x It is clear that a court personnel is prohibited from disclosing confidential information to any unauthorized person. Confidential information is any information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any judge relating to pending cases, including drafts. It is of no moment that Quitorio merely disclosed that a draft

resolution had been prepared and submitted, but did not specify the contents thereof. x x x The conduct of court personnel 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. Informing a party in a case about the submission of a draft resolution and advising said party to directly communicate with a judge regarding the same constitutes impropriety and puts into question the integrity of the court.

3. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT NECESSARILY INCLUDES THE LESSER OFFENSE OF SIMPLE MISCONDUCT. — A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave. Grave misconduct necessarily includes the lesser offense of simple misconduct. Thus, one can be held liable for simple misconduct if any of the elements to make the misconduct grave is not established by substantial evidence. In such case, there is no violation of a person's constitutional right to be informed of the charges against him.

4. ID.; ID.; ID.; ID.; IN THE ABSENCE OF THE ELEMENT OF CORRUPTION FOR GRAVE MISCONDUCT, RESPONDENT MAY ONLY BE HELD LIABLE FOR SIMPLE MISCONDUCT. — In the case at bench, there is no allegation or evidence presented to show that Quitorio prepared the draft resolution and informed Dadulla of the same for some benefit for himself or for another person. Thus, the element of corruption for grave misconduct is absent. Corruption, as stated earlier, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. Quitorio, therefore, may only be held liable for simple misconduct and not grave misconduct.

5. ID.; ID.; ID.; ID.; PENALTY FOR SIMPLE MISCONDUCT; EFFECT OF RETIREMENT OR RESIGNATION ON THE IMPOSABLE PENALTY. — Under Rule IV, Section 52(B)(2) of the Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is a less grave offense punishable with suspension of one (1) month and one (1) day to six (6)

months for the first offense, and dismissal from the service for the second offense. In *Donton v. Loria*, where the respondent was found guilty of simple misconduct as a second offense, the penalty of suspension for six months without pay was imposed instead of dismissal, taking into account humanitarian reasons, length of service, and good faith. Quitorio pleads the same reasons. In view of Quitorio's retirement, however, the penalty of suspension can no longer be imposed. Nonetheless, his resignation does not render the complaint against him moot, as resignation is not and should not be a convenient way or strategy to evade administrative liability when a court employee is facing administrative sanction. In *Leyrit v. Solas*, where the penalty of suspension for simple misconduct was no longer feasible due to therein respondent's compulsory retirement, the penalty of a fine equivalent to three months' salary was imposed, to be deducted from the retirement benefits. Finding the recommendation of OCA to be appropriate under the circumstances, the Court finds that the penalty of a fine in the amount of ₱20,000.00 be imposed upon Quitorio, to be deducted from his retirement benefits.

D E C I S I O N

MENDOZA, *J.*:

This is a complaint for Grave Misconduct filed by Judge Rowena Nieves A. Tan *(Judge Tan)* against respondent Ernesto Quitorio *(Quitorio)*, then the Legal Researcher of Branch 2, Regional Trial Court, Borongan, Eastern Samar *(RTC Branch 2)*, for drafting a resolution of a motion to dismiss in a case which was not assigned to him and for informing the favored movant of the submission of the draft to her, with instructions to follow it up with her.

Records show that on January 11, 2008, Judge Tan filed an unsworn letter-complaint[1] requesting for an investigation on Quitorio's alleged misconduct. In the said letter, Judge Tan averred that: she was the Acting Presiding Judge of RTC Branch 2 from March to October 2007; at that time, there was

[1] *Rollo*, pp. 1-2.

a pending motion to dismiss filed by Angeles Gomez *(Gomez)*, respondent in Civil Case No. 4052, which was an original case for recovery of ownership and annulment of title; on November 21, 2007, upon her return to her original court station in RTC, Branch 42, Balangiga, Eastern Samar, she received a text message from Corazon Dadulla *(Dadulla)*, Gomez's errand girl, which read "Good am! *Maam c cora ito. Pwede kmada ha balangiga importante la kan mana angie papakiana. Tanx a lnt*." ("Good am! Maam this is Cora. May I go to Balangiga? Mana Angie has something important to ask you. Thanks a lot"); she knew Dadulla to have a pending case in RTC Branch 2 for Large Scale Illegal Recruitment but she did not know where and how Dadulla got her mobile phone number; sensing that Dadulla wanted to see her about Gomez's case, she informed her that she had left RTC Branch 2 and had nothing more to do with the cases there; despite that, Dadulla, as ordered by Gomez, still came to see her on November 27, 2007, regarding the draft resolution of Quitorio granting Gomez's motion to dismiss; Civil Case No. 4052 was never assigned to Quitorio, to whom she only assigned appealed cases; and she had not even read the said draft which she left in RTC Branch 2.

Judge Tan added that she had been previously warned about Quitorio's reputation in RTC Branch 2, so she made it a policy to make the Clerk of Court, Atty. Crisolito Tavera *(Atty. Tavera)*, privy to the cases assigned to Quitorio; the said motion to dismiss had yet to be scheduled for hearing at the time Quitorio drafted the resolution; and on December 3, 2007, she confronted Quitorio in the presence of Executive Judge Elvie P. Lim *(Executive Judge)* and the RTC Branch 2 staff, and Quitorio insisted that she assigned the case to him for resolution, and he admitted drafting the resolution and informing Gomez that he already submitted it to her.

In its January 18, 2008 Indorsement, the Office of the Court Administrator *(OCA)* referred the complaint to Quitorio for his comment within ten (10) days from receipt. Quitorio, in his Comment[2] dated March 19, 2008 denied the charges of Judge

[2] *Id.* at 10-12.

Tan and claimed that he had been a public servant for over 25 years. He insisted that Judge Tan, knowingly or unknowingly, did assign the case to him as it was one of the records he received to be worked on, and no one called his attention or bothered to take the expediente and case records from him. He drafted the resolution in the honest belief that it had been assigned to him. In August 2007, when he prepared the draft resolution and personally handed it to Judge Tan, she even thanked him for his work. He wondered why Judge Tan only confronted him in December 2007 when he had submitted the draft resolution almost four months earlier.

Quitorio further denied having informed Gomez about the draft resolution. He, however, admitted that he conveyed to Dadulla that he had already submitted the draft resolution to Judge Tan and "it was up for them to do whatever they desired under the circumstances."[3]

He also advised Dadulla, who was a familiar figure in court being the wife of one of the deputy sheriffs, "to just follow it up with the judge in her sala in Balangiga, Eastern Samar."[4]

He also refuted Judge Tan's assertion that only appealed cases were assigned to him. He claimed that he was also assigned special proceedings cases and an original case, namely, Criminal Case No. 11151, entitled "*People v. Tito Ejada*," for murder. With respect to the criminal case, Judge Tan even instructed him to draft a decision in favor of the prosecution after her father, Atty. Rufilo Tan, as the private prosecutor in the said case, withdrew his appearance. He declined because he was of the opinion that the records showed no direct evidence of guilt, and he refused to be a part of any corrupt or anomalous activity.

Quitorio also contended that contrary to due process and the confidentiality required of a proper investigation, Judge Tan berated, verbally abused, insulted, and grievously humiliated him in the presence of his officemates and the Executive Judge,

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[3] *Id.* at 10.

[4] *Id.* at 324.

and was not afforded the opportunity to explain himself. He only received a copy of the letter-complaint three months later when he was already out of the service, after having applied for his optional retirement in October 2007, which took effect on December 31, 2007.

In her reply[5] to Quitorio's comment, Judge Tan averred that it was not only full of lies but it was also libelous. She countered that the real reason why Quitorio had not been reporting for work was not his optional retirement but his suspension from office for three months without pay and with stern warning after having been found guilty of simple misconduct in an *en banc* decision of this Court in A.M. No. 06-6-340-RTC.[6] In another administrative case, namely, A.M. No. 06-4-220-RTC,[7] Quitorio was found guilty of simple neglect of duty. He was fined ₱3,000.00 and warned that a repetition of the same offense would be dealt with more severely.

Judge Tan also contended that when Quitorio admittedly "conveyed" to Dadulla that he "already had handed a draft Resolution in said case to Judge Tan and that it was up for them to do whatever they desired under the circumstances," he violated Section 1, Canon II of the New Code of Judicial Conduct for Court Personnel regarding confidentiality.[8]

Judge Tan, however, denied any wrongdoing concerning Criminal Case No. 11151. She claimed that while sitting as the Acting Presiding Judge of RTC Branch 2, she deliberately did not decide on the case because her father was the former private prosecutor therein. She only granted her father's Motion to Withdraw with Prayer for Relief, and ordered the case submitted for decision after the defense rested its case. She believed that there was nothing irregular in granting her father's motion.

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[5] *Id.* at 24-29.

[6] *Re: Report on the Judicial Audit Conducted in the RTC, Branch 4, Dolores, Eastern Samar,* October 17, 2007, 536 SCRA 313.

[7] *Re: Report on the Judicial Audit Conducted in the RTC, Branch 2, Borongan, Eastern Samar,* October 19, 2006, 504 SCRA 756.

[8] *Rollo,* p. 10.

With regard to this, Judge Tan later manifested that contrary to Quitorio's allegation that the criminal case was dismissible for lack of evidence, the incumbent Presiding Judge of RTC Branch 2, Judge Leandro Catalo, found otherwise and convicted the accused of the crime charged. As attested to by Atty. Tavera, the transcripts of stenographic notes for said case were not even complete at the time her designation as Acting Presiding Judge ended. She, thus, could not have yet assigned the case to Quitorio for research and drafting at that time.[9]

Judge Tan stated that it was not her practice to confront court employees in front of other people, but in Quitorio's case she did so to ensure that their conversation would be witnessed by others because of his propensity for lying and twisting the truth.

In its Report[10] dated May 21, 2008, the Office of the Court Administrator (*OCA*), confirmed that Quitorio was indeed fined and suspended in two separate administrative cases and verified that he had indeed applied for optional retirement on August 11, 2007 effective December 31, 2007, which application, however, was still under evaluation and processing. Then, OCA made the following recommendations:

(1) The case be referred to the Executive Judge of RTC, Borongan, Eastern Samar, for Investigation, Report and Recommendation within sixty (60) days from notice and

(2) The respondent be made to explain why he should not be further charged with dishonesty for the false statement in his Comment that he is no longer in the service.

In its July 7, 2008 Resolution,[11] the Court adopted the OCA recommendations.

In the hearing before the Executive Judge on November 3, 2008, the parties agreed that instead of resetting the hearing,

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[9] Manifestation, *id.* at 250-251.

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

[11] *Id.* at 41.

Quitorio would just answer the affidavit-complaint[12] filed by Judge Tan within ten days. The parties were likewise enjoined to submit their respective memoranda/position papers, after which, the case would be deemed submitted for resolution.

In his Explanation[13] dated November 12, 2008, Quitorio explained that there was no malice, falsehood or dishonesty on his part in stating that he was already out of the service. He honestly considered himself out of the service as he was no longer reporting to work pending the effectivity of his optional retirement.

On November 13, 2008, Atty. Wilfredo M. Bolito *(Atty. Bolito)* entered his appearance as counsel for Quitorio, and moved for the conduct of a formal investigation, which was later denied by the Executive Judge in the Order[14] dated January 7, 2009.

In her position paper,[15] Judge Tan reiterated her contentions and arguments in her complaint.

The Memorandum[16] of Quitorio, on the other hand, reiterated the defenses stated in his Comment, along with additional matters. He insisted that a trial type hearing may not be dispensed with in administrative proceedings. He added that he was not instructed to consult and inform the Clerk of Court regarding the assignment of his cases. Atty. Tavera's affidavits could not be considered best evidence within administrative proceedings, considering that the affiant was available to testify. Furthermore, the affidavits were barren of details as to which specific cases were assigned to him, and did not even state that Civil Case No. 4052 was not assigned to him. He blamed Atty. Tavera for failing in his duty to control and supervise the safekeeping of court records in accordance with Section 7, Rule 136 of the Rules of Court and

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

[13] *Id.* at 310-311.

[14] *Id.* at 91-92.

[15] *Id.* at 103-108.

[16] *Id.* at 152-168.

for failing to account how the records of the case came into his possession.

Quitorio further made the following contentions: that the claim that Civil Case No. 4052 was unripe for resolution was misleading because the motion had already been submitted for resolution by Gomez's counsel after the plaintiff filed her comment; that the statements of Dadulla could not prejudice him because he was not a party to the conversation or privy to the offer of compromise between the parties, in accordance with the rule on *res inter alios acta*; and that Judge Tan should be considered estopped from questioning his preparation of the draft resolution when she did not question him about any irregularity right after she had received it from him.

He also surmised that Judge Tan filed a case against him out of resentment, for his refusal to draft a decision in favor of the prosecution in Criminal Case No. 11152. In support of his good faith, he pointed out that the draft resolution of the motion to dismiss in Civil Case No. 4052 was adopted by Judge Leandro C. Catalo, the current Presiding Judge of RTC Branch 2.

As regards the charge of Grave Misconduct, Quitorio contended that the elements of corruption, clear intent to violate the law or flagrant disregard of established rule were absent as he acted upon the order of Judge Tan in good faith in accordance with the office's long-practiced procedure. He argued that he never informed Dadulla about the contents of the draft resolution and, therefore, did not divulge any confidential information.

He also insisted that he was innocent of the charges for which he was found guilty by this Court in the two separate administrative cases.

On April 3, 2009, Executive Judge Elvie P. Lim *(Judge Lim)* submitted her Report and Recommendation.[17] Giving credence to the complaint of Judge Tan, Judge Lim was of the view that Quitorio knowingly drafted a resolution in a case that was not assigned to him, and that he informed Dadulla about the draft

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[17] *Id.* at 171-185.

in violation of the rule on confidentiality. She opined, however, that the elements of Grave Misconduct were not adequately proven and, thus, recommended that Quitorio be held liable for simple misconduct only with the penalty of suspension for six months without pay.

In a letter[18] dated February 5, 2010, in the interest of justice and for humanitarian considerations due to numerous medical expenses incurred by him and his wife, Quitorio requested for the immediate resolution of the present administrative case, and for the early approval of his retirement application and release of his retirement benefits with a portion to be withheld to answer for any administrative liability.

In its Resolution dated April 7, 2010, the Court referred the Report and Recommendation of Judge Lim and the February 5, 2010 Letter of Quitorio to the OCA.

The OCA in its Memorandum dated October 27, 2010, agreed with Judge Lim that Quitorio is guilty of simple misconduct. Considering that based on the records, Quitorio had been separated from the service effective December 31, 2007, OCA stated that the recommended penalty of suspension could not be adopted. Instead, the OCA recommended the imposition of a fine of ₱20,000.00 considering Quitorio's past administrative liabilities. It was also recommended that Quitorio's retirement benefits be released, subject to the deduction of the fine and the usual clearances.

The charge of Grave Misconduct in this case covers two acts of Quitorio, namely, (1) preparing a draft resolution in a pending case which was not assigned to him, and (2) informing the respondent in said case about the draft resolution and its submission to Judge Tan, with the further advice to follow it up with her.

Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct

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[18] *Id.* at 269-270.

is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, all of which must be established by substantial evidence, and must necessarily be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[19]

In view of the foregoing, the Court finds itself hardly convinced that Quitorio prepared the draft resolution of the motion knowing that the case was not assigned to him. Although both Judge Tan and Atty. Tavera insist that only special proceedings and appealed cases were assigned to Quitorio, the evidence, nonetheless, is nebulous. The affidavits of Atty. Tavera do not categorically state that Civil Case No. 4052 was not assigned to Quitorio. Neither was there a detailed list of cases assigned to him. The affidavits of Atty. Tavera only stated that in accordance with the verbal orders of Judge Tan, he assigned to Quitorio several special proceeding cases and appealed cases from the MTC. Absent any evidence of corruption, this Court is inclined to believe that the case in question was inadvertently assigned to Quitorio, and that he believed in good faith that it was indeed assigned to him for research and drafting. Under the circumstances, this particular act of Quitorio cannot be considered a misconduct, either grave or simple, as it is not violative of any established and definite rule of action.

On the other hand, Quitorio's admission that he informed Dadulla about the submission of his draft resolution with advice to follow it up with Judge Tan in her sala is violative of the confidentiality required of court personnel. Section 1, Canon II of the New Code of Judicial Conduct for Court Personnel,[20] provides:

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[19] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011.

[20] A.M. No. 03-06-13-SC.

CANON II

CONFIDENTIALITY

SECTION 1. Court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the judiciary, whether such information came from authorized or unauthorized sources.

Confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers.

The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or orders shall remain confidential even after the decision, resolution or order is made public.

It is clear that a court personnel is prohibited from disclosing confidential information to any unauthorized person. Confidential information is any information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any judge relating to pending cases, including drafts.

It is of no moment that Quitorio merely disclosed that a draft resolution had been prepared and submitted, but did not specify the contents thereof.

Furthermore, it was highly improper for Quitorio to advise Dadulla to personally follow up the draft resolution with Judge Tan at her sala in Balangiga. Judge Tan could not have taken any action on the case because she was no longer the Acting Presiding Judge at the time.

The conduct of court personnel 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. Informing a party in a case about the submission of a draft resolution and advising said party to

directly communicate with a judge regarding the same constitutes impropriety and puts into question the integrity of the court.

A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave. Grave misconduct necessarily includes the lesser offense of simple misconduct. Thus, one can be held liable for simple misconduct if any of the elements to make the misconduct grave is not established by substantial evidence. In such case, there is no violation of a person's constitutional right to be informed of the charges against him.[21]

In the case at bench, there is no allegation or evidence presented to show that Quitorio prepared the draft resolution and informed Dadulla of the same for some benefit for himself or for another person. Thus, the element of corruption for grave misconduct is absent. Corruption, as stated earlier, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[22] Quitorio, therefore, may only be held liable for simple misconduct and not grave misconduct.

Under Rule IV, Section 52 (B) (2)[23] of the Uniform Rules on Administrative Cases in the Civil Service,[24] simple misconduct is a less grave offense punishable with suspension of one (1)

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[21] *Civil Service Commission v. Ledesma,* 508 Phil. 569, 579-580 (2005).

[22] *Office of the Court Administrator v. Lopez, supra* note 19.

[23] Section 52. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity of depravity and effects on the government service.

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B. The following are *less grave offenses* with the corresponding penalties:

x x x x x x x x x

2. Simple Misconduct
   1st Offense — Suspension 1 mo. 1 day to 6 mos.
   2nd Offense — Dismissal

[24] CSC Resolution No. 99-1936.

month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. In *Donton v. Loria*,[25] where the respondent was found guilty of simple misconduct as a second offense, the penalty of suspension for six months without pay was imposed instead of dismissal, taking into account humanitarian reasons, length of service, and good faith. Quitorio pleads the same reasons.

In view of Quitorio's retirement, however, the penalty of suspension can no longer be imposed. Nonetheless, his resignation does not render the complaint against him moot, as resignation is not and should not be a convenient way or strategy to evade administrative liability when a court employee is facing administrative sanction.[26] In *Leyrit v. Solas*,[27] where the penalty of suspension for simple misconduct was no longer feasible due to therein respondent's compulsory retirement, the penalty of a fine equivalent to three months' salary was imposed, to be deducted from the retirement benefits.

Finding the recommendation of OCA to be appropriate under the circumstances, the Court finds that the penalty of a fine in the amount of ₱20,000.00 be imposed upon Quitorio, to be deducted from his retirement benefits.

Let it again be stressed that all court employees, 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. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts.[28]

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[25] *Donton v. Loria*, A.M. No. P-03-1684, March 10, 2006, 484 SCRA 224, 232-233.

[26] *Escalona v. Padillo*, A.M. No. P-10-2785, September 21, 2010.

[27] *Leyrit v. Solas*, A.M. No. P-08-2567, October 30, 2009, 604 SCRA 668, 683.

[28] *Office of the Court Administration v. Lopez; supra* note 19.

WHEREFORE, Ernesto C. Quitorio, former Legal Researcher of Regional Trial Court, Branch 2, Borongan, Eastern Samar, is hereby found *GUILTY* of Simple Misconduct. He is ordered to pay a *FINE* in the amount of ₱20,000.00 to be deducted from his retirement benefits. The Court further directs that respondent's retirement benefits be released to him, subject to the deduction of the fine imposed herein and the usual clearances.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-11-2932. May 30, 2011]
(Formerly A.M. OCA I.P.I. No. 10-3412-P)

ANGELITA D. MAYLAS, *complainant, vs.* **JUANCHO M. ESMERIA, Sheriff IV, Regional Trial Court, Branch 46, Masbate City,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; DUTY TO IMPLEMENT THE WRIT OF POSSESSION IS MINISTERIAL; ERRORS COMMITTED BY THE SHERIFF IS CORRECTIBLE BY THE TRIAL COURT. — [T]he present controversy is the offshoot of an alleged irregularity in the implementation of the writ of possession issued by the RTC, Branch 46, Masbate City. The matter, therefore, remains with the supervisory control of the court and the alleged errors committed by the court's ministerial officers, like the respondent sheriff, should be correctible by the court, as we emphasized in *Olimpia K. Vda. de Dimayuga v. Gaspara Raymundo, et al.* We, thus, support

the OCA's view that the alleged irregularities should have been brought first to the RTC for its resolution. The same is true with the writ of possession itself. The respondent had nothing to do with it. It was the judge's responsibility as the writ was issued by the court. The respondent sheriff's duty, it must be stressed, is only to implement the writ and this duty is ministerial.

R E S O L U T I O N

BRION, *J.*:

Before the Court is the administrative complaint dated May 30, 2010,[1] filed by Angelita D. Maylas (*complainant*), charging Juancho M. Esmeria (*respondent*), Sheriff IV of the Regional Trial Court (RTC), Branch 46, Masbate City, with *grave misconduct, gross ignorance of the law and incompetence*.

The Facts

The complainant and her husband, Ignacio Maylas, were the plaintiffs in a civil action (Civil Case No. 5165) for *quieting of title and recovery of possession and ownership* against the defendants-spouses Oscar and Marilyn Dolendo. On November 25, 2005, the RTC, Branch 46, Masbate City, where the case was filed, rendered a Decision,[2] as follows:

1) Ordering the defendants to pay the plaintiffs the amount of Php23,000.00 representing the value of the house owned by the plaintiffs which was destroyed and demolished by the defendants;

2) Declaring the defendants the possessor and owner of the lot where his (sic) house is presently being constructed; [and]

3) Ordering the defendants to pay the amount of Php10,000.00 as attorney's fees[.]

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[1] *Rollo*, pp. 3-4.

[2] *Id.* at 77-80.

On August 2, 2007, the court issued a writ of possession that, according to the complainant, is defective as it failed to conform to the second paragraph of the decision's dispositive portion. On the same day, the respondent filed a motion to secure the assistance of a geodetic engineer, without furnishing a copy of the motion to the parties, especially the plaintiffs. The complainant regards this omission by the respondent to be gross ignorance of the law and procedure, for it deprived the plaintiffs the opportunity to oppose the motion.

On August 3, 2007, the court granted the respondent's motion. The following day, the respondent filed an officer's return[3] which allegedly provided an inaccurate and misleading information that half of the house of Sps. Oscar and Marilyn Dolendo was demolished by Sps. Ignacio and Angelita Maylas and in the area where the demolition occurred, the Maylas couple constructed an apartment and put up barriers of G.I. roofings and barbed wires on the back portion of the apartment facing of the Dolendo couple.

The complainant points out that the property the respondent referred to is not the property under litigation as it is covered by tax declaration no. 19436 (dated January 2003) in the complainant's name. She claims that on the contrary, the property subject of the civil case is covered by tax declaration no. 10751 (dated October 20, 1980)[4] in the name of Ignacio Maylas, which property was destroyed by the Sps. Dolendo and is being claimed by Oscar Dolendo under tax declaration no. 12995 (declared by the court as a mere duplication of Ignacio Maylas' tax declaration). The complainant charges the respondent of distorting the facts to unduly favor his friends, the Sps. Dolendo.

By way of a comment dated August 18, 2010,[5] the respondent asks for the dismissal of the complaint for lack of merit, contending that it is pure harassment intended to stop him from

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[3] *Id.* at 25.

[4] *Id.* at 11.

[5] *Id.* at 33-36.

enforcing the writ. He argues that the Sps. Maylas took the law into their hands and, acting as sheriff, demolished a portion of the Sps. Dolendo's house when the Court denied the Sps. Maylas' motion for reconsideration before the implementation of the writ of possession.

The respondent adds that the demolition of a portion of the Sps. Dolendo's house prompted them to sue the Maylas couple for damages (Civil Case No. 6158) before the RTC, Branch 47, Masbate City, and a complaint for malicious mischief (I.S. No. 01-3730) before the Provincial Prosecution Office.

With respect to the alleged defective writ of possession, the respondent argues that the issue is judicial in nature; it was his ministerial duty, as sheriff, to implement the writ.

The respondent accuses the complainant of citing only portions of the decision favorable to her and her husband, without taking into consideration that the defendants (Dolendos) were declared the possessors and owners of the lot where their house is presently being constructed.

The Court's Ruling

In its memorandum submitted to the Court on February 1, 2011, the Office of the Court Administrator (OCA) recommends that the complaint be dismissed for lack of merit, based on the following evaluation:

EVALUATION: A thorough perusal of the instant administrative matter ultimately reveals that the crux of complainant's accusation centers only on the alleged distortion of facts by respondent sheriff in his Officer's Return where he alleged that it was the spouses Maylas which caused the demolition of the half of the house of spouses Dolendo, contrary to the pronouncement in the Decision that it was actually the house owned by the plaintiffs which was destroyed by the defendants. Respondent sheriff, however, rebuts the accusation by explaining that spouses Maylas likewise caused the demolition of half of the house of spouses Dolendo after the Decision was rendered and before the implementation of the Writ of Possession.

At any rate, considering that the conflict arose from an alleged irregularity in the implementation of a writ issued by a trial court, this Office deems it proper to let the trial court which issued the Writ of Possession settle the matter.

It is already a settled jurisprudence that the tribunal which rendered the decision or award has a general supervisory control over the process of its execution, and this includes the power to determine every question of fact and law which may be involved in the execution.[6] This is because any court which issued a writ of execution has the inherent power, for the advancement of justice, to correct error of its ministerial officers and to control its own processes.[7] Hence, any irregularities which attended the execution of the decision must be litigated in the court which issued it. Herein complainant, therefore, should first bring the alleged erroneous allegation and conclusion of fact by respondent sheriff before the trial court.

Regarding the alleged defective Writ of Possession, respondent sheriff was right when he pointed out that the alleged defect is judicial in nature as the same was issued as per Order of the judge. Clearly, respondent sheriff's duty to implement the same is purely ministerial on his part.

Lastly, *vis-à-vis* the lack of hearing of the Motion for the Assistance of a Geodetic Engineer, the same was eventually granted by the trial court. Evidently, if complainant really believes that they were deprived of the required procedural due process, she should have impleaded as respondent either the presiding judge or the branch clerk of court, for these are the court officers primarily responsible in the setting and granting/denying of a motion. In grumbling against respondent sheriff about the alleged erroneous issuance of the motion, complainant had ended up barking on the wrong tree.

RECOMMENDATION: Respectfully submitted, for the consideration of the Honorable Court, is the recommendation that the instant administrative complaint against Juancho M. Esmeria, Sheriff IV of the Regional Trial Court, Branch 46, Masbate City, be DISMISSED for lack of merit.[8]

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[6] *Vda. de Paman v. Señeris,* No. L-37632, July 30, 1982, 115 SCRA 709.

[7] *Vda. de Dimayuga v. Raymundo and Noble,* 76 Phil. 143 (1946).

[8] *Rollo,* pp. 98-99.

We approve and adopt the OCA's well-founded recommendation.

Indeed, as the OCA noted, the present controversy is the offshoot of an alleged irregularity in the implementation of the writ of possession issued by the RTC, Branch 46, Masbate City. The matter, therefore, remains with the supervisory control of the court and the alleged errors committed by the court's ministerial officers, like the respondent sheriff, should be correctible by the court, as we emphasized in *Olimpia K. Vda. de Dimayuga v. Gaspara Raymundo, et al.*[9] We, thus, support the OCA's view that the alleged irregularities should have been brought first to the RTC for its resolution.

The same is true with the writ of possession itself. The respondent had nothing to do with it. It was the judge's responsibility as the writ was issued by the court. The respondent sheriff's duty, it must be stressed, is only to implement the writ and this duty is ministerial.

WHEREFORE, premises considered, the complaint is *DISMISSED* for lack of merit.

SO ORDERED.

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

[9] *Supra* note 7.

FIRST DIVISION

[G.R. No. 125078. May 30, 2011]

BERNABE L. NAVIDA, JOSE P. ABANGAN, JR., CEFERINO P. ABARQUEZ, ORLANDITO A. ABISON, FELIPE ADAYA, ALBERTO R. AFRICA, BENJAMIN M. ALBAO, FELIPE ALCANTARA, NUMERIANO S. ALCARIA, FERNANDO C. ALEJADO, LEOPOLDO N. ALFONSO, FLORO I. ALMODIEL, ANTONIO B. ALVARADO, ELEANOR AMOLATA, RODOLFO P. ANCORDA, TRIFINO F. ANDRADA, BERT B. ANOCHE, RAMON E. ANTECRISTO, ISAGANI D. ANTINO, DOMINGO ANTOPINA, MANSUETO M. APARICIO, HERMINIGILDO AQUINO, MARCELO S. AQUINO, JR., FELIPE P. ARANIA, ULYSES M. ARAS, ARSENIO ARCE, RUPERTO G. ARINZOL, MIGUEL G. ARINZOL, EDGARADO P. ARONG, RODRIGO D.R. ASTRALABIO, RONNIE BACAYO, SOFRONIO BALINGIT, NELSON M. BALLENA, EMNIANO BALMONTE, MAXIMO M. BANGI, SALVADOR M. BANGI, HERMOGENES T. BARBECHO, ARSENIO B. BARBERO, DIOSDADO BARREDO, VIRGILIO BASAS, ALEJANDRO G. BATULAN, DOMINGO A. BAUTISTA, VICTOR BAYANI, BENIGNO BESARES, RUFINO BETITO, GERARDO A. BONIAO, CARLO B. BUBUNGAN, FERNANDO B. BUENAVISTA, ALEJANDRINO H. BUENO, TOMAS P. BUENO, LEONARDO M. BURDEOS, VICENTE P. BURGOS, MARCELINO J. CABALUNA, DIOSDADO CABILING, EMETRIO C. CACHUELA, BRAULIO B. CADIVIDA, JR., SAMSON C. CAEL, DANIEL B. CAJURAO, REY A. CALISO, NORBERTO F. CALUMPAG, CELESTINO CALUMPAG, LORETO CAMACHO, VICTORIANO CANETE, DOMINADOR P. CANTILLO, FRUCTUSO P. CARBAJOSA, VICTORINO S. CARLOS, VICTOR CARLOS, GEORGE M. CASSION, JAIME S. CASTAÑARES, FLAVIANO C. CASTAÑARES, ELPIDIO CATUBAY, NATHANIEL

B. CAUSANG, BEOFIL B. CAUSING, ADRIANO R. CEJAS, CIRILO G. CERERA, SR., CRISTITUTO M. CEREZO, DANTE V. CONCHA, ALBERT CORNELIO, CESAR CORTES, NOEL Y. CORTEZ, SERNUE CREDO, CORNELIO A. CRESENCIO, ALEX CRUZ, ROGER CRUZ, RANSAM CRUZ, CANUTO M. DADULA, ROMEO L. DALDE, ZACARIAS DAMBAAN, ELISEO DAPROZA, VIRGILIO P. DAWAL, TESIFREDO I. DE TOMAS, GAMALLER P. DEANG, CARMELINO P. DEANG, DIOSDADO P. DEANG, DOMINGO A. DEANG, FELIPE R. DEANG, JR., JULIETO S. DELA CRUZ, ELIEZER R. DELA TORRE, JEFFREY R. DELA TORRE, RAUL DEMONTEVERDE, FELIPE P. DENOLAN, RUBENCIO P. DENOY, RODRIGO M. DERMIL, ROLANDO B. DIAZ, LORENZO DIEGO, JOVENCIO DIEGO, SATURNINO DIEGO, GREGORIO DIONG, AMADO R. DIZON, FE DIZON, VIRGILO M. DOMANTAY, LEO S. DONATO, DOMINADOR L. DOSADO, NESTOR DUMALAG, FREDDIE DURAN, SR., MARIO C. ECHIVERE, AQUILLO M. EMBRADORA, MIGUEL EMNACE, RIO T. EMPAS, EFRAIM ENGLIS, ANICETO ENOPIA, DIOCENE ENTECOSA, RUBENTITO D. ENTECOSA, AVELINO C. ENTERO, FORTUNATA ENTRADA, ROGELIO P. EROY, RODOLFO M. ESCAMILLA, SERGIO C. ESCANTILLA, LAZARO A. ESPAÑOLA, EULOGIO M. ETURMA, PRIMO P. FERNANDEZ, EDILBERTO D. FERNANDO, GREGORIO S. FERNANDO, VICENTE P. FERRER, MARCELO T. FLOR, ANTONIO M. FLORES, REDENTOR T. FLOREZA, NORBERTO J. FUENTES, RICARDO C. GABUTAN, PEDRO D.V. GALEOS, ARNULFO F. GALEOS, EDGARDO V. GARCESA, BERNARDO P. GENTOBA, EDUARDO P. GENTOBA, VICTORIO B. GIDO, ROLANDO V. GIMENA, EARLWIN L. GINGOYO, ERNESTO GOLEZ, JUANITO G. GONZAGA, ONOFRE GONZALES, AMADO J. GUMERE, LEONARDO M. GUSTO, ALEJANDRO G. HALILI, NOEL H. HERCEDA, EMILIO V. HERMONDO, CLAUDIO HIPOLITO,

TORIBIO S. ILLUSORIO, TEODURO G. IMPANG, JR., GIL A. JALBUNA, HERMIE L. JALICO, ARMANDO B. JAMERLAN, NARCISO JAPAY, LIBURO C. JAVINAS, ALEJANDO S. JIMENEZ, FEDERICO T. JUCAR, NAPOLEON T. JUMALON, OSCAR JUNSAY, ANASTACIO D. LABANA, CARLOS C. LABAY, AVELINO L. LAFORTEZA, LOE LAGUMBAY, NORBETO D. LAMPERNIS, ROLANDO J. LAS PEÑAS, ISMAEL LASDOCE, RENOLO L. LEBRILLA, CAMILO G. LEDRES, ANASTACIO LLANOS, ARMANDO A. LLIDO, CARLITO LOPEZ, ARISTON LOS BAÑEZ, CONCISO L. LOVITOS, ARQUILLANO M. LOZADA, RODOLFO C. LUMAKIN, PRIMITIVO LUNTAO, JR., EMILIO S. MABASA, JR., JUANITO A. MACALISANG, TEOTIMO L. MADULIN, JOSEPH D. MAGALLON, PEDRO P. MAGLASANG, MARIO G. MALAGAMBA, JAIME B. MAMARADLO, PANFILO A. MANADA, SR., RICARDO S. MANDANI, CONCHITA MANDANI, ALBERTO T. MANGGA, ALEJANDRO A. MANSANES, RUFINO T. MANSANES, EUTIQUIO P. MANSANES, ALCIO P. MARATAS, AGAPITO D. MARQUEZ, RICARDO R. MASIGLAT, DENDERIA MATABANG, ARNELO N. MATILLANO, HERNANI C. MEJORADA, ROSITA MENDOZA, GREGORIO R. MESA, RENATO N. MILLADO, ANTONIO L. MOCORRO, ALBERTO M. MOLINA, JR., DOMINGO P. MONDIA, JUANITO P. MONDIA, RICARDO MONTAÑO, RAUL T. MONTEJO, ROGELIO MUNAR, RODOLFO E. MUÑEZ, CRESENCIO NARCISO, PANFILO C. NARCISO, BRICS P. NECOR, MOISES P. NICOLAS, NEMESIO G. NICOLAS, ALFREDO NOFIEL, FELIX T. NOVENA, MARCELO P. OBTIAL, SR., TEODORO B. OCRETO, BIBIANO C. ODI, ALFREDO M. OPERIO, TEOTISTO B. OPON, IZRO M. ORACION, ALAN E. ORANAS, ELPEDIO T. OSIAS, ERNESTO M. PABIONA, NARCISO J. PADILLA, NELSON G. PADIOS, SR., FRANCISCO G. PAGUNTALAN, RENE B. PALENCIA, MICHAEL P. PALOMAR, VIRGILIO E. PANILAGAO,

NOLITO C. PANULIN, ROMEO PARAGUAS, NESTOR B. PASTERA, VICENTE Q. PEDAZO, EDGAR M. PEÑARANDA, ILUMINIDO B. PERACULLO, ANTONIO C. PEREZ, DOMINGO PEREZ, OSCAR C. PLEÑOS, ANTONIETO POLANCOS, SERAFIN G. PRIETO, ZENAIDA PROVIDO, FERNANDO Y. PROVIDO, ERNESTO QUERO, ELEAZAR QUIJARDO, WILLIAM U. QUINTOY, LAURO QUISTADIO, ROGELIO RABADON, MARCELINO M. RELIZAN, RAUL A. REYES, OCTAVIO F. REYES, EDDIE M. RINCOR, EMMANUEL RIVAS, RODULFO RIVAS, BIENVENIDO C. ROMANCA, JACINTO ROMOC, ROMEO S. ROMUALDO, ALBERTO ROSARIO, ROMEO L. SABIDO, SIMON SAGNIP, TIMOTEO SALIG, ROMAN G. SALIGONAN, VICTORINO SALOMON, GENEROSO J. SALONGKONG, RODOLFO E. SALVANI, JIMMY A. SAMELIN, EDUARDO A. SAMELIN, ANDRES A. SAMELIN, GEORGE SAMELIN, ROMEO A. SARAOSOS, RUDIGELIO S. SARMIENTO, CIRILO SAYAANG, JARLO SAYSON, LEONCIO SERDONCILLO, RODOLFO C. SERRANO, NESTOR G. SEVILLA, SIMEON F. SIMBA, CATALINO S. SIMTIM, SERAFIN T. SINSUANGCO, EDUARDO A. SOLA, VICTORINO M. SOLOMON, JAIME B. SUFICIENCIA, LYNDON SUMAJIT, ALFREDO P. SUMAJIT, ALFREDO L. SUMAJIT, PEDRO A. SUMARAGO, ERNESTO SUMILE, NESTOR S. SUMOG-OY, MANUEL T. SUPAS, WILFREDO A. TABAQUE, CONSTANCIO L. TACULAD, EUFROCINO A. TAGOTO, JR., SERAPIO TAHITIT, PANTALEON T. TAMASE, ERNESTO TARRE, MAGNO E. TATOY, AVELINO TAYAPAD, SAMUEL S. TERRADO, APOLINARIO B. TICO, ORLANDO TINACO, ALBERT G. TINAY, ANTONIO TOLEDO, ANTONIO M. TORREGOSA, ISABELO TORRES, JIMMY C. TORRIBIO, EDUARDO Y. TUCLAOD, JACINTO UDAL, RICARDO M. URBANO, ERNESTO G. VAFLOR, FILOMENO E. VALENZUELA, SALORIANO VELASCO, RODOLFO VIDAL, WALTER VILLAFAÑE, DANTE

VILLALVA, PERIGRINO P. VILLARAN, JESUS L. VILLARBA, ELEAZAR D. VILLARBA, JENNY T. VILLAVA, HENRY C. VILLEGAS, DELFIN C. WALOG, RODOLFO YAMBAO, EDGAR A. YARE, MANSUETO M. YBERA, EDUARDO G. YUMANG, HENRY R. YUNGOT, ROMEO P. YUSON, ARSENIA ZABALA, FELIX N. ZABALA and GRACIANO ZAMORA, *petitioners, vs.* **HON. TEODORO A. DIZON, JR., Presiding Judge, Regional Trial Court, Branch 37, General Santos City, SHELL OIL CO., DOW CHEMICAL CO., OCCIDENTAL CHEMICAL CORP., STANDARD FRUIT CO., STANDARD FRUIT & STEAMSHIP CO., DOLE FOOD CO., INC., DOLE FRESH FRUIT CO., DEL MONTE FRESH PRODUCE N.A., DEL MONTE TROPICAL FRUIT CO., CHIQUITA BRANDS INTERNATIONAL, INC. and CHIQUITA BRANDS, INC.,** *respondents.*

[G.R. No. 125598. May 30, 2011]

THE DOW CHEMICAL COMPANY and OCCIDENTAL CHEMICAL CORPORATION, *petitioners, vs.* **BERNABE L. NAVIDA, JOSE P. ABANGAN, JR., CEFERINO P. ABARQUEZ, ORLANDITO A. ABISON, FELIPE ADAYA, ALBERTO R. AFRICA, BENJAMIN M. ALBAO, FELIPE ALCANTARA, NUMERIANO S. ALCARIA, FERNANDO C. ALEJADO, LEOPOLDO N. ALFONSO, FLORO I. ALMODIEL, ANTONIO B. ALVARADO, ELEANOR AMOLATA, RODOLFO P. ANCORDA, TRIFINO F. ANDRADA, BERT B. ANOCHE, RAMON E. ANTECRISTO, ISAGANI D. ANTINO, DOMINGO ANTOPINA, MANSUETO M. APARICIO, HERMINIGILDO AQUINO, MARCELO S. AQUINO, JR., FELIPE P. ARANIA, ULYSES M. ARAS, ARSENIO ARCE, RUPERTO G. ARINZOL, MIGUEL G. ARINZOL, EDGARADO P. ARONG, RODRIGO D.R. ASTRALABIO, RONNIE BACAYO, SOFRONIO BALINGIT, NELSON M. BALLENA, EMNIANO BALMONTE, MAXIMO M. BANGI, SALVADOR M.**

BANGI, HERMOGENES T. BARBECHO, ARSENIO B. BARBERO, DIOSDADO BARREDO, VIRGILIO BASAS, ALEJANDRO G. BATULAN, DOMINGO A. BAUTISTA, VICTOR BAYANI, BENIGNO BESARES, RUFINO BETITO, GERARDO A. BONIAO, CARLO B. BUBUNGAN, FERNANDO B. BUENAVISTA, ALEJANDRINO H. BUENO, TOMAS P. BUENO, LEONARDO M. BURDEOS, VICENTE P. BURGOS, MARCELINO J. CABALUNA, DIOSDADO CABILING, EMETRIO C. CACHUELA, BRAULIO B. CADIVIDA, JR., SAMSON C. CAEL, DANIEL B. CAJURAO, REY A. CALISO, NORBERTO F. CALUMPAG, CELESTINO CALUMPAG, LORETO CAMACHO, VICTORIANO CANETE, DOMINADOR P. CANTILLO, FRUCTUSO P. CARBAJOSA, VICTORINO S. CARLOS, VICTOR CARLOS, GEORGE M. CASSION, JAIME S. CASTAÑARES, FLAVIANO C. CASTAÑARES, ELPIDIO CATUBAY, NATHANIEL B. CAUSANG, BEOFIL B. CAUSING, ADRIANO R. CEJAS, CIRILO G. CERERA, SR., CRISTITUTO M. CEREZO, DANTE V. CONCHA, ALBERT CORNELIO, CESAR CORTES, NOEL Y. CORTEZ, SERNUE CREDO, CORNELIO A. CRESENCIO, ALEX CRUZ, ROGER CRUZ, RANSAM CRUZ, CANUTO M. DADULA, ROMEO L. DALDE, ZACARIAS DAMBAAN, ELISEO DAPROZA, VIRGILIO P. DAWAL, TESIFREDO I. DE TOMAS, GAMALLER P. DEANG, CARMELINO P. DEANG, DIOSDADO P. DEANG, DOMINGO A. DEANG, FELIPE R. DEANG, JR., JULIETO S. DELA CRUZ, ELIEZER R. DELA TORRE, JEFFREY R. DELA TORRE, RAUL DEMONTEVERDE, FELIPE P. DENOLAN, RUBENCIO P. DENOY, RODRIGO M. DERMIL, ROLANDO B. DIAZ, LORENZO DIEGO, JOVENCIO DIEGO, SATURNINO DIEGO, GREGORIO DIONG, AMADO R. DIZON, FE DIZON, VIRGILO M. DOMANTAY, LEO S. DONATO, DOMINADOR L. DOSADO, NESTOR DUMALAG, FREDDIE DURAN, SR., MARIO C. ECHIVERE, AQUILLO M. EMBRADORA, MIGUEL EMNACE, RIO T. EMPAS, EFRAIM ENGLIS, ANICETO

ENOPIA, DIOCENE ENTECOSA, RUBENTITO D. ENTECOSA, AVELINO C. ENTERO, FORTUNATA ENTRADA, ROGELIO P. EROY, RODOLFO M. ESCAMILLA, SERGIO C. ESCANTILLA, LAZARO A. ESPAÑOLA, EULOGIO M. ETURMA, PRIMO P. FERNANDEZ, EDILBERTO D. FERNANDO, GREGORIO S. FERNANDO, VICENTE P. FERRER, MARCELO T. FLOR, ANTONIO M. FLORES, REDENTOR T. FLOREZA, NORBERTO J. FUENTES, RICARDO C. GABUTAN, PEDRO D.V. GALEOS, ARNULFO F. GALEOS, EDGARDO V. GARCESA, BERNARDO P. GENTOBA, EDUARDO P. GENTOBA, VICTORIO B. GIDO, ROLANDO V. GIMENA, EARLWIN L. GINGOYO, ERNESTO GOLEZ, JUANITO G. GONZAGA, ONOFRE GONZALES, AMADO J. GUMERE, LEONARDO M. GUSTO, ALEJANDRO G. HALILI, NOEL H. HERCEDA, EMILIO V. HERMONDO, CLAUDIO HIPOLITO, TORIBIO S ILLUSORIO, TEODURO G. IMPANG, JR., GIL A. JALBUNA, HERMIE L. JALICO, ARMANDO B. JAMERLAN, NARCISO JAPAY, LIBURO C. JAVINAS, ALEJANDO S. JIMENEZ, FEDERICO T. JUCAR, NAPOLEON T. JUMALON, OSCAR JUNSAY, ANASTACIO D. LABANA, CARLOS C. LABAY, AVELINO L. LAFORTEZA, LOE LAGUMBAY, NORBETO D. LAMPERNIS, ROLANDO J. LAS PEÑAS, ISMAEL LASDOCE, RENOLO L. LEBRILLA, CAMILO G. LEDRES, ANASTACIO LLANOS, ARMANDO A. LLIDO, CARLITO LOPEZ, ARISTON LOS BAÑEZ, CONCISO L. LOVITOS, ARQUILLANO M. LOZADA, RODOLFO C. LUMAKIN, PRIMITIVO LUNTAO, JR., EMILIO S. MABASA, JR., JUANITO A. MACALISANG, TEOTIMO L. MADULIN, JOSEPH D. MAGALLON, PEDRO P. MAGLASANG, MARIO G. MALAGAMBA, JAIME B. MAMARADLO, PANFILO A. MANADA, SR., RICARDO S. MANDANI, CONCHITA MANDANI, ALBERTO T. MANGGA, ALEJANDRO A. MANSANES, RUFINO T. MANSANES, EUTIQUIO P. MANSANES, ALCIO P. MARATAS, AGAPITO D. MARQUEZ,

RICARDO R. MASIGLAT, DENDERIA MATABANG, ARNELO N. MATILLANO, HERNANI C. MEJORADA, ROSITA MENDOZA, GREGORIO R. MESA, RENATO N. MILLADO, ANTONIO L. MOCORRO, ALBERTO M. MOLINA, JR., DOMINGO P. MONDIA, JUANITO P. MONDIA, RICARDO MONTAÑO, RAUL T. MONTEJO, ROGELIO MUNAR, RODOLFO E. MUÑEZ, CRESENCIO NARCISO, PANFILO C. NARCISO, BRICS P. NECOR, MOISES P. NICOLAS, NEMESIO G. NICOLAS, ALFREDO NOFIEL, FELIX T. NOVENA, MARCELO P. OBTIAL, SR., TEODORO B. OCRETO, BIBIANO C. ODI, ALFREDO M. OPERIO, TEOTISTO B. OPON, IZRO M. ORACION, ALAN E. ORANAS, ELPEDIO T. OSIAS, ERNESTO M. PABIONA, NARCISO J. PADILLA, NELSON G. PADIOS, SR., FRANCISCO G. PAGUNTALAN, RENE B. PALENCIA, MICHAEL P. PALOMAR, VIRGILIO E. PANILAGAO, NOLITO C. PANULIN, ROMEO PARAGUAS, NESTOR B. PASTERA, VICENTE Q. PEDAZO, EDGAR M. PEÑARANDA, ILUMINIDO B. PERACULLO, ANTONIO C. PEREZ, DOMINGO PEREZ, OSCAR C. PLEÑOS, ANTONIETO POLANCOS, SERAFIN G. PRIETO, ZENAIDA PROVIDO, FERNANDO Y. PROVIDO, ERNESTO QUERO, ELEAZAR QUIJARDO, WILLIAM U. QUINTOY, LAURO QUISTADIO, ROGELIO RABADON, MARCELINO M. RELIZAN, RAUL A. REYES, OCTAVIO F. REYES, EDDIE M. RINCOR, EMMANUEL RIVAS, RODULFO RIVAS, BIENVENIDO C. ROMANCA, JACINTO ROMOC, ROMEO S. ROMUALDO, ALBERTO ROSARIO, ROMEO L. SABIDO, SIMON SAGNIP, TIMOTEO SALIG, ROMAN B. SALIGONAN, VICTORINO SALOMON, GENEROSO M. SALONGKONG, RODOLFO E. SALVANI, JIMMY A. SAMELIN, EDUARDO A. SAMELIN, ANDRES A. SAMELIN, GEORGE SAMELIN, ROMEO A. SARAOSOS, RUDIGELIO S. SARMIENTO, CIRILO SAYAANG, JARLO SAYSON, LEONCIO SERDONCILLO, RODOLFO C. SERRANO, NESTOR

G. SEVILLA, SIMEON F. SIMBA, CATALINO S. SIMTIM, SERAFIN T. SINSUANGCO, EDUARDO A. SOLA, VICTORINO M. SOLOMON, JAIME B. SUFICIENCIA, LYNDON SUMAJIT, ALFREDO P. SUMAJIT, ALFREDO L. SUMAJIT, PEDRO A. SUMARAGO, ERNESTO SUMILE, NESTOR S. SUMOG-OY, MANUEL T. SUPAS, WILFREDO A. TABAQUE, CONSTANCIO L. TACULAD, EUFROCINO A. TAGOTO, JR., SERAPIO TAHITIT, PANTALEON T. TAMASE, ERNESTO TARRE, MAGNO E. TATOY, AVELINO TAYAPAD, SAMUEL S. TERRADO, APOLINARIO B. TICO, ORLANDO TINACO, ALBERT G. TINAY, ANTONIO TOLEDO, ANTONIO M. TORREGOSA, ISABELO TORRES, JIMMY C. TORRIBIO, EDUARDO Y. TUCLAOD, JACINTO UDAL, RICARDO M. URBANO, ERNESTO G. VAFLOR, FILOMENO E. VALENZUELA, SALORIANO VELASCO, RODOLFO VIDAL, WALTER VILLAFAÑE, DANTE VILLALVA, PERIGRINO P. VILLARAN, JESUS L. VILLARBA, ELEAZAR D. VILLARBA, JENNY T. VILLAVA, HENRY C. VILLEGAS, DELFIN C. WALOG, RODOLFO YAMBAO, EDGAR A. YARE, MANSUETO M. YBERA, EDUARDO G. YUMANG, HENRY R. YUNGOT, ROMEO P. YUSON, ARSENIA ZABALA, FELIX N. ZABALA, and GRACIANO ZAMORA, *respondents.*

[G.R. No. 126654. May 30, 2011]

CORNELIO ABELLA, JR., IRENEO AGABATU, PRUDENCIO ALDEPOLIA, ARTEMIO ALEMAN, FIDEL ALLERA, DOMINGO ALONZO, CORNELIO AMORA, FELIPE G. AMORA, LEOPOLDO AMORADO, MARCELINO ANDIMAT, JORGE ANDOY, MARGARITO R. ANGELIA, GREGOTIO APRIANO, ALFREDO A. ARARAO, BONIFACIO L. ARTIGAS, JERSON ASUAL, SERAFIN AZUCENA, FELIX M. BADOY, JULIAN J. BAHALLA, REYNALDO BAHAYA, ANTONIO L. BALDAGO, CESAR N. BALTAZAR, DOMINADO A.

BARING, ANTIPAS A. BATINGAL, MARCIANO NATINGAL, MARINO BIBANCO, LEANDRO BILIRAN, MARGARITO BLANCO, CATALINO BONGO, MELCHOR BRIGOLE, ELISEO BRINA, ROBERTO BRINA, LUIS BUGHAO, EDUARDO L. BURGUINZO, CELSO M. BUSIA, RPDITO CABAGTE, RICARADO C. CABALLES, CARLITO A. CAINDOC, CANDIDO CALO, JR., PEDRITO CAMPAS, FERNANDO R. CAPAROSO, DANILO CARILLO, BONIFACIO M. CATCHA, FRANKLIN CLARAS, JOSE F. COLLAMAT, BERNARDO M. COMPENDIO, CORNELIO COSTILLAS, ENERIO R. DAGAME, FELIMON DEBUMA, JR., RICADO C. DEIPARIME, GREGORIO S. DE LA PENA, JOSE G. DELUAO, JR., ELPEDIO A. DIAZ, QUINTINO DISIPULO, JR., CESAR G. DONAYRE, JOSE DULABAY, JAIRO DUQUIZA, ANTONIO ENGBINO, ALFREDO ESPINOSA, ALONZO FAILOG, JAIME FEROLINO, RODOLFO L. GABITO, PEDRO G. GEMENTIZA, RICARDO A. GEROLAGA, RODULFO G. GEROY, ROGELIO GONZAGA, ROLANDO GONZALES, MODESTO M. GODELOSAO, HECTOR GUMBAN, CAMILO HINAG, LECERIO IGBALIC, SILVERIO E. IGCALINOS, ALFREDO INTOD, OLEGARIO IYUMA, DOMINGO B. JAGMOC, JR., EDUARDO JARGUE, ROLANDO A. LABASON, ROLANDO LACNO, VIRGILIO A. LADURA, CONSTANCIO M. LAGURA, FRANCISCO LAMBAN, ENRIQUE LAQUERO, LUCIO B. LASACA, SISINO LAURDEN, VIVENCIO LAWANGON, ANECITO LAYAN, FERNANDO P. LAYAO, MARDENIO LAYAO, NEMENCIO C. LINAO, PEDRO LOCION, ENERIO LOOD, DIOSDADO MADATE, RAMON MAGDOSA, NILO MAGLINTE, MARINO G. MALINAO, CARLITO MANACAP, AURELIO A. MARO, CRISOSTOMO R. MIJARES, CESAR MONAPCO, SILVANO MONCANO, EMILIO MONTAJES, CESAR B. MONTERO, CLEMENTE NAKANO, RODRIGO H. NALAS, EMELIANO C. NAPITAN, JUANITO B. NARON, JR., LUCIO NASAKA, TEOFILO NUNEZ, JORGE M.

OLORVIDA, CANULO P. OLOY, DOROTEO S. OMBRETE, TEOFILIO OMOSURA, MIGUEL ORALO, SUSANTO C. OTANA, JR., CHARLIE P. PADICA, ALFREDO P. PALASPAS, CATALINO C. PANA, ERNESTO M. PASCUAL, BIENVENIDO PAYAG, RESURRECCION PENOS, PEDRO PILAGO, ROMEO PRESBITERO, OMEO L. PRIEGO, ELADIO QUIBOL, JESUS D. QUIBOL, MAGNO QUIZON, DIONISIO RAMOS, MAMERTO RANISES, NESTOR B. REBUYA, RODRIGO REQUILMEN, ISIDRO RETANAL, CARLITO ROBLE, GLICERIO V. ROSETE, TINOY G. SABINO, MELCHOR SALIGUMBA, SILVERIO SILANGAN, ROBERTO SIVA, PACITA SUYMAN, CANILO TAJON, AVELINO TATAPOD, ROMEO TAYCO, RENATO TAYCO, CONRADO TECSON, AGAPITO TECSON, ROMAN. E. TEJERO, ALFREDO TILANDOCA, CARLOS B. TIMA, HERMONEGES TIRADOR, JOSELITO TIRO, PASTOR T. TUNGKO, LEANDRO B. TURCAL, VICENTE URQUIZA, VICENTE VILLA, ANTONIO P. VILLARAIZ, LEOPOLDO VILLAVITO and SAMUEL M. VILLEGAS, *petitioners, vs.* **THE HON. ROMEO D. MARASIGAN, Presiding Judge of Regional Trial Court, Branch 16, Davao City, SHELL OIL CO., DOW CHEMICAL CO., OCCIDENTAL CHEMICAL CORP., STANDARD FRUIT CO., STANDARD FRUIT & STEAMSHIP CO., DOLE FOOD CO., INC., DOLE FRESH FRUIT CO., DEL MONTE FRESH PRODUCE N.A., DEL MONTE TROPICAL FRUIT CO., CHIQUITA BRANDS INTERNATIONAL, INC. and CHIQUITA BRANDS, INC.,** *respondents.*

[G.R. No. 127856. May 30, 2011]

DEL MONTE FRESH PRODUCE N.A. and DEL MONTE TROPICAL FRUIT CO., *petitioners, vs.* **THE REGIONAL TRIAL COURT OF DAVAO CITY, BRANCHES 16 AND 13, CORNELIO ABELLA, JR., IRENEO AGABATU, PRUDENCIO ALDEPOLIA, ARTEMIO ALEMAN, FIDEL ALLERA, DOMINGO ALONZO, CORNELIO**

AMORA, FELIPE G. AMORA, LEOPOLDO AMORADO, MARCELINO ANDIMAT, JORGE ANDOY, MARGARITO R. ANGELIA, GREGOTIO APRIANO, ALFREDO A. ARARAO, BONIFACIO L. ARTIGAS, JERSON ASUAL, SERAFIN AZUCENA, FELIX M. BADOY, JULIAN J. BAHALLA, REYNALDO BAHAYA, ANTONIO L. BALDAGO, CESAR N. BALTAZAR, DOMINADO A. BARING, ANTIPAS A. BATINGAL, MARCIANO NATINGAL, MARINO BIBANCO, LEANDRO BILIRAN, MARGARITO BLANCO, CATALINO BONGO, MELCHOR BRIGOLE, ELISEO BRINA, ROBERTO BRINA, LUIS BUGHAO, EDUARDO L. BURGUINZO, CELSO M. BUSIA, RPDITO ?
CABAGTE, RICARADO C. CABALLES, CARLITO A. CAINDOC, CANDIDO CALO, JR., PEDRITO CAMPAS, FERNANDO R. CAPAROSO, DANILO CARILLO, BONIFACIO M. CATCHA, FRANKLIN CLARAS, JOSE F. COLLAMAT, BERNARDO M. COMPENDIO, CORNELIO COSTILLAS, ENERIO R. DAGAME, FELIMON DEBUMA, JR., RICADO C. DEIPARIME, GREGORIO S. DE LA PENA, JOSE G. DELUAO, JR., ELPEDIO A. DIAZ, QUINTINO DISIPULO, JR., CESAR G. DONAYRE, JOSE DULABAY, JAIRO DUQUIZA, ANTONIO ENGBINO, ALFREDO ESPINOSA, ALONZO FAILOG, JAIME FEROLINO, RODOLFO L. GABITO, PEDRO G. GEMENTIZA, RICARDO A. GEROLAGA, RODULFO G. GEROY, ROGELIO GONZAGA, ROLANDO GONZALES, MODESTO M. GODELOSAO, HECTOR GUMBAN, CAMILO HINAG, LECERIO IGBALIC, SILVERIO E. IGCALINOS, ALFREDO INTOD, OLEGARIO IYUMA, DOMINGO B. JAGMOC, JR., EDUARDO JARGUE, ROLANDO A. LABASON, ROLANDO LACNO, VIRGILIO A. LADURA, CONSTANCIO M. LAGURA, FRANCISCO LAMBAN, ENRIQUE LAQUERO, LUCIO B. LASACA, SISINO LAURDEN, VIVENCIO LAWANGON, ANECITO LAYAN, FERNANDO P. LAYAO, MARDENIO LAYAO, NEMENCIO C. LINAO, PEDRO LOCION, ENERIO LOOD, DIOSDADO MADATE, RAMON MAGDOSA,

NILO MAGLINTE, MARINO G. MALINAO, CARLITO MANACAP, AURELIO A. MARO, CRISOSTOMO R. MIJARES, CESAR MONAPCO, SILVANO MONCANO, EMILIO MONTAJES, CESAR B. MONTERO, CLEMENTE NAKANO, RODRIGO H. NALAS, EMELIANO C. NAPITAN, JUANITO B. NARON, JR., LUCIO NASAKA, TEOFILO NUNEZ, JORGE M. OLORVIDA, CANULO P. OLOY, DOROTEO S. OMBRETE, TEOFILIO OMOSURA, MIGUEL ORALO, SUSANTO C. OTANA, JR., CHARLIE P. PADICA, ALFREDO P. PALASPAS, CATALINO C. PANA, ERNESTO M. PASCUAL, BIENVENIDO PAYAG, RESURRECCION PENOS, PEDRO PILAGO, ROMEO PRESBITERO, OMEO L. PRIEGO, ELADIO QUIBOL, JESUS D. QUIBOL, MAGNO QUIZON, DIONISIO RAMOS, MAMERTO RANISES, NESTOR B. REBUYA, RODRIGO REQUILMEN, ISIDRO RETANAL, CARLITO ROBLE, GLICERIO V. ROSETE, TINOY G. SABINO, MELCHOR SALIGUMBA, SILVERIO SILANGAN, ROBERTO SIVA, PACITA SUYMAN, CANILO TAJON, AVELINO TATAPOD, ROMEO TAYCO, RENATO TAYCO, CONRADO TECSON, AGAPITO TECSON, ROMAN E. TEJERO, ALFREDO TILANDOCA, CARLOS B. TIMA, HERMONEGES TIRADOR, JOSELITO TIRO, PASTOR T. TUNGKO, LEANDRO B. TURCAL, VICENTE URQUIZA, VICENTE VILLA, ANTONIO P. VILLARAIZ, LEOPOLDO VILLAVITO and SAMUEL M. VILLEGAS, *respondents.*

[G.R. No. 128398. May 30, 2011]

CHIQUITA BRANDS, INC., and CHIQUITA BRANDS INTERNATIONAL, INC., *petitioners, vs.* **HON. ANITA ALFELOR-ALAGABAN, in her capacity as Presiding Judge of the Regional Trial Court, Davao City, Branch 13, CORNELIO ABELLA, JR., IRENEO AGABATU, PRUDENCIO ALDEPOLIA, ARTEMIO ALEMAN, FIDEL ALLERA, DOMINGO ALONZO, CORNELIO AMORA, FELIPE G. AMORA, LEOPOLDO AMORADO,**

MARCELINO ANDIMAT, JORGE ANDOY, MARGARITO R. ANGELIA, GREGOTIO APRIANO, ALFREDO A. ARARAO, BONIFACIO L. ARTIGAS, JERSON ASUAL, SERAFIN AZUCENA, FELIX M. BADOY, JULIAN J. BAHALLA, REYNALDO BAHAYA, ANTONIO L. BALDAGO, CESAR N. BALTAZAR, DOMINADO A. BARING, ANTIPAS A. BATINGAL, MARCIANO NATINGAL, MARINO BIBANCO, LEANDRO BILIRAN, MARGARITO BLANCO, CATALINO BONGO, MELCHOR BRIGOLE, ELISEO BRINA, ROBERTO BRINA, LUIS BUGHAO, EDUARDO L. BURGUINZO, CELSO M. BUSIA, RPDITO CABAGTE, RICARADO C. CABALLES, CARLITO A. CAINDOC, CANDIDO CALO, JR., PEDRITO CAMPAS, FERNANDO R. CAPAROSO, DANILO CARILLO, BONIFACIO M. CATCHA, FRANKLIN CLARAS, JOSE F. COLLAMAT, BERNARDO M. COMPENDIO, CORNELIO COSTILLAS, ENERIO R. DAGAME, FELIMON DEBUMA, JR., RICADO C. DEIPARIME, GREGORIO S. DE LA PENA, JOSE G. DELUAO, JR., ELPEDIO A. DIAZ, QUINTINO DISIPULO, JR., CESAR G. DONAYRE, JOSE DULABAY, JAIRO DUQUIZA, ANTONIO ENGBINO, ALFREDO ESPINOSA, ALONZO FAILOG, JAIME FEROLINO, RODOLFO L. GABITO, PEDRO G. GEMENTIZA, RICARDO A. GEROLAGA, RODULFO G. GEROY, ROGELIO GONZAGA, ROLANDO GONZALES, MODESTO M. GODELOSAO, HECTOR GUMBAN, CAMILO HINAG, LECERIO IGBALIC, SILVERIO E. IGCALINOS, ALFREDO INTOD, OLEGARIO IYUMA, DOMINGO B. JAGMOC, JR., EDUARDO JARGUE, ROLANDO A. LABASON, ROLANDO LACNO, VIRGILIO A. LADURA, CONSTANCIO M. LAGURA, FRANCISCO LAMBAN, ENRIQUE LAQUERO, LUCIO B. LASACA, SISINO LAURDEN, VIVENCIO LAWANGON, ANECITO LAYAN, FERNANDO P. LAYAO, MARDENIO LAYAO, NEMENCIO C. LINAO, PEDRO LOCION, ENERIO LOOD, DIOSDADO MADATE, RAMON MAGDOSA, NILO MAGLINTE, MARINO G. MALINAO, CARLITO

MANACAP, AURELIO A. MARO, CRISOSTOMO R. MIJARES, CESAR MONAPCO, SILVANO MONCANO, EMILIO MONTAJES, CESAR B. MONTERO, CLEMENTE NAKANO, RODRIGO H. NALAS, EMELIANO C. NAPITAN, JUANITO B. NARON, JR., LUCIO NASAKA, TEOFILO NUNEZ, JORGE M. OLORVIDA, CANULO P. OLOY, DOROTEO S. OMBRETE, TEOFILIO OMOSURA, MIGUEL ORALO, SUSANTO C. OTANA, JR., CHARLIE P. PADICA, ALFREDO P. PALASPAS, CATALINO C. PANA, ERNESTO M. PASCUAL, BIENVENIDO PAYAG, RESURRECCION PENOS, PEDRO PILAGO, ROMEO PRESBITERO, OMEO L. PRIEGO, ELADIO QUIBOL, JESUS D. QUIBOL, MAGNO QUIZON, DIONISIO RAMOS, MAMERTO RANISES, NESTOR B. REBUYA, RODRIGO REQUILMEN, ISIDRO RETANAL, CARLITO ROBLE, GLICERIO V. ROSETE, TINOY G. SABINO, MELCHOR SALIGUMBA, SILVERIO SILANGAN, ROBERTO SIVA, PACITA SUYMAN, CANILO TAJON, AVELINO TATAPOD, ROMEO TAYCO, RENATO TAYCO, CONRADO TECSON, AGAPITO TECSON, ROMAN E. TEJERO, ALFREDO TILANDOCA, CARLOS B. TIMA, HERMONEGES TIRADOR, JOSELITO TIRO, PASTOR T. TUNGKO, LEANDRO B. TURCAL, VICENTE URQUIZA, VICENTE VILLA, ANTONIO P. VILLARAIZ, LEOPOLDO VILLAVITO and SAMUEL M. VILLEGAS, *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; ACTIONS FOR DAMAGES BASED ON QUASI-DELICT WHERE EACH PLAINTIFF CLAIMS ABOUT 2.7 MILLION FALL WITHIN THE RTC JURISDICTION. — [T]he allegations in the Amended Joint-Complaints of NAVIDA, *et al.*, and ABELLA, *et al.*, attribute to defendant companies certain acts and/or omissions which led to their exposure to nematocides containing the chemical DBCP. According to NAVIDA, *et al.*, and ABELLA, *et al.*, such exposure to the said chemical caused ill effects, injuries and illnesses, specifically to their

reproductive system. Thus, these allegations in the complaints constitute the cause of action of plaintiff claimants — a quasi-delict, which under the Civil Code is defined as an act, or omission which causes damage to another, there being fault or negligence. x x x As specifically enumerated in the amended complaints, NAVIDA, *et al.*, and ABELLA, *et al.*, point to the acts and/or omissions of the defendant companies in manufacturing, producing, selling, using, and/or otherwise putting into the stream of commerce, nematocides which contain DBCP, "without informing the users of its hazardous effects on health and/or without instructions on its proper use and application." x x x Clearly then, the acts and/or omissions attributed to the defendant companies constitute a quasi-delict which is the basis for the claim for damages filed by NAVIDA, *et al.*, and ABELLA, *et al.*, with individual claims of approximately ₱2.7 million for each plaintiff claimant, which obviously falls within the purview of the civil action jurisdiction of the RTCs.

2. ID.; ID.; ID.; ID.; IN ACTIONS FOR DAMAGES BASED ON THE HARMFUL EFFECTS OF PESTICIDES, THE REGIONAL TRIAL COURTS OF THE PLACE WHERE THE CAUSE OF ACTION OCCURRED ARE THE PROPER AND CONVENIENT FORA FOR TRYING THESE CASES AND NOT THE PLACE WHERE THE PESTICIDES WERE MANUFACTURED OR PACKAGED. — [T]he injuries and illnesses, which NAVIDA, *et al.*, and ABELLA, *et al.*, allegedly suffered resulted from their exposure to DBCP while they were employed in the banana plantations located in the Philippines or while they were residing within the agricultural areas also located in the Philippines. The factual allegations in the Amended Joint-Complaints all point to their cause of action, which undeniably **occurred in the Philippines**. The RTC of General Santos City and the RTC of Davao City obviously have reasonable basis to assume jurisdiction over the cases. It is, therefore, error on the part of the courts *a quo* when they dismissed the cases on the ground of lack of jurisdiction on the mistaken assumption that the cause of action narrated by NAVIDA, *et al.*, and ABELLA, *et al.*, took place abroad and had occurred outside and beyond the territorial boundaries of the Philippines, *i.e.*, "the manufacture of the pesticides, their packaging in containers, their distribution through sale or other disposition, resulting in their becoming part of the stream of commerce," and, hence, outside the jurisdiction of the RTCs. Certainly, the cases below

are not criminal cases where territoriality, or the *situs* of the act complained of, would be determinative of jurisdiction and venue for trial of cases. In *personal* civil actions, such as claims for payment of damages, the Rules of Court allow the action to be commenced and tried in the appropriate court, where any of the plaintiffs or defendants resides, or in the case of a non-resident defendant, where he may be found, at the election of the plaintiff. In a very real sense, most of the evidence required to prove the claims of NAVIDA, *et al.*, and ABELLA, *et al.*, are available only in the Philippines. First, plaintiff claimants are all residents of the Philippines, either in General Santos City or in Davao City. Second, the specific areas where they were allegedly exposed to the chemical DBCP are within the territorial jurisdiction of the courts *a quo* wherein NAVIDA, *et al.*, and ABELLA, *et al.*, initially filed their claims for damages. Third, the testimonial and documentary evidence from important witnesses, such as doctors, co-workers, family members and other members of the community, would be easier to gather in the Philippines. Considering the great number of plaintiff claimants involved in this case, it is not far-fetched to assume that voluminous records are involved in the presentation of evidence to support the claim of plaintiff claimants. Thus, these additional factors, coupled with the fact that the alleged cause of action of NAVIDA, *et al.*, and ABELLA, *et al.*, against the defendant companies for damages **occurred in the Philippines**, demonstrate that, apart from the RTC of General Santos City and the RTC of Davao City having jurisdiction over the subject matter in the instant civil cases, they are, indeed, the convenient fora for trying these cases.

3. ID.; ID.; ID.; ID.; ID.; THE REGIONAL TRIAL COURTS OF GENERAL SANTOS CITY AND DAVAO CITY PROPERLY ACQUIRED JURISDICTION OVER THE DEFENDANT COMPANIES WHEN THEY SUBMITTED THEMSELVES TO THE JURISDICTION OF THE SAID COURTS. — Rule 14, Section 20 of the 1997 Rules of Civil Procedure provides that "[t]he defendant's voluntary appearance in the action shall be equivalent to service of summons." In this connection, all the defendant companies designated and authorized representatives to receive summons and to represent them in the proceedings before the courts *a quo*. All the defendant companies submitted themselves to the jurisdiction of the courts *a quo* by making several voluntary appearances, by praying for various affirmative reliefs, and by actively

participating during the course of the proceedings below. In line herewith, this Court, in *Meat Packing Corporation of the Philippines v. Sandiganbayan*, held that jurisdiction over the person of the defendant in civil cases is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons. Furthermore, the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court or body's jurisdiction. Thus, the RTC of General Santos City and the RTC of Davao City have validly acquired jurisdiction over the persons of the defendant companies, as well as over the subject matter of the instant case. What is more, this jurisdiction, which has been acquired and has been vested on the courts *a quo*, continues until the termination of the proceedings.

4. CIVIL LAW; CONTRACTS; COMPROMISE AGREEMENT; CONCEPT. — Under Article 2028 of the Civil Code, "[a] compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." Like any other contract, an extrajudicial compromise agreement is not excepted from rules and principles of a contract. It is a consensual contract, perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Judicial approval is not required for its perfection. A compromise has upon the parties the effect and authority of *res judicata* and this holds true even if the agreement has not been judicially approved. In addition, as a binding contract, a compromise agreement determines the rights and obligations of **only** the parties to it.

5. ID.; OBLIGATIONS; SOLIDARY OBLIGATION; DEFINED. — It is true that, under Article 2194 of the Civil Code, the responsibility of two or more persons who are liable for the same quasi-delict is solidary. A solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors.

6. ID.; ID.; ID.; THERE IS NO RIGHT OF REIMBURSEMENT TO SPEAK OF, WHERE THE OBLIGATION OF THE DEFENDANTS TO PAY IS YET TO BE DETERMINED. — In the cases at bar, there is no right of reimbursement

to speak of as yet. A trial on the merits must necessarily be conducted first in order to establish whether or not defendant companies are liable for the claims for damages filed by the plaintiff claimants, which would necessarily give rise to an obligation to pay on the part of the defendants. At the point in time where the proceedings below were prematurely halted, no cross-claims have been interposed by any defendant against another defendant. If and when such a cross-claim is made by a non-settling defendant against a settling defendant, it is within the discretion of the trial court to determine the propriety of allowing such a cross-claim and if the settling defendant must remain a party to the case purely in relation to the cross claim.

7. ID.; ID.; ID.; THE RIGHT OF THE REMAINING DEFENDANTS TO SEEK REIMBURSEMENT WILL NOT BE AFFECTED BY THE COMPROMISE AGREEMENTS ENTERED INTO BY OTHER DEFENDANTS WITH SOME CLAIMANTS. — In *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*, the Court had the occasion to state that "where there are, along with the parties to the compromise, other persons involved in the litigation who have not taken part in concluding the compromise agreement but are adversely affected or feel prejudiced thereby, should not be precluded from invoking in the same proceedings an adequate relief therefor." Relevantly, in *Philippine International Surety Co., Inc. v. Gonzales*, the Court upheld the ruling of the trial court that, in a joint and solidary obligation, the paying debtor may file a third-party complaint and/or a cross-claim to enforce his right to seek contribution from his co-debtors. Hence, the right of the remaining defendant(s) to seek reimbursement in the above situation, if proper, is not affected by the compromise agreements allegedly entered into by NAVIDA, *et al.*, and ABELLA, *et al.*, with some of the defendant companies.

APPEARANCES OF COUNSEL

Callanta and Partners Law Firm for Bernabe Navida, *et al.*

Bengzon Narciso Cudala Pecson Bengson & Jimenez for Dow Chemical Co., *et al.*

Raul Reyes for petitioners in G.R. No. 125078.

Medina & Partners for Abella, *et al.*

Castillo Laman Tan Pantaleon & San Jose for Chiquita Brands, *et al.*

Quisumbing Torres for Dow Chemical Co., *et al.*

Angara Abello Concepcion Regala and Cruz for Shell Oil Company.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court are consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, which arose out of two civil cases that were filed in different courts but whose factual background and issues are closely intertwined.

The petitions in **G.R. Nos. 125078**[1] and **125598**[2] both assail the Order[3] dated May 20, 1996 of the Regional Trial Court (RTC) of General Santos City, Branch 37, in Civil Case No. 5617. The said Order decreed the dismissal of the case in view of the perceived lack of jurisdiction of the RTC over the subject matter of the complaint. The petition in G.R. No. 125598 also challenges the Orders dated June 4, 1996[4] and July 9, 1996,[5] which held that the RTC of General Santos City no longer had jurisdiction to proceed with Civil Case No. 5617.

On the other hand, the petitions in **G.R. Nos. 126654**,[6] **127856**,[7] and **128398**[8] seek the reversal of the Order[9] dated October 1,

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[1] *Rollo* (G.R. No. 125078), Vol. I, pp. 39-71.

[2] *Rollo* (G.R. No. 125598), pp. 10-59.

[3] *Rollo* (G.R. No. 125078), Vol. I, pp. 72-85; penned by Judge Teodoro A. Dizon, Jr.

[4] *Rollo* (G.R. No. 125598), pp. 75-76.

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

[6] *Rollo* (G.R. No. 126654), pp. 12-36.

[7] *Rollo* (G.R. No. 127856), pp. 16-31.

[8] *Rollo* (G.R. No. 128398), pp. 17-42.

[9] *Rollo* (G.R. No. 126654), pp. 34-35; penned by Judge Romeo D. Marasigan.

1996 of the RTC of Davao City, Branch 16, in Civil Case No. 24,251-96, which also dismissed the case on the ground of lack of jurisdiction.

G.R. Nos. 125078, 125598, 126654, 127856, and 128398 were consolidated in the Resolutions dated February 10, 1997,[10] April 28, 1997[11] and March 10, 1999.[12]

The factual antecedents of the petitions are as follows:

Proceedings before the Texas Courts

Beginning 1993, a number of personal injury suits were filed in different Texas state courts by citizens of twelve foreign countries, including the Philippines. The thousands of plaintiffs sought damages for injuries they allegedly sustained from their exposure to *dibromochloropropane* (DBCP), a chemical used to kill nematodes (worms), while working on farms in 23 foreign countries. The cases were eventually transferred to, and consolidated in, the Federal District Court for the Southern District of Texas, Houston Division. The cases therein that involved plaintiffs from the Philippines were "*Jorge Colindres Carcamo, et al. v. Shell Oil Co., et al.,*" which was docketed as Civil Action No. H-94-1359, and "*Juan Ramon Valdez, et al. v. Shell Oil Co., et al.,*" which was docketed as Civil Action No. H-95-1356. The defendants in the consolidated cases prayed for the dismissal of all the actions under the doctrine of *forum non conveniens*.

In a **Memorandum and Order dated July 11, 1995**, the Federal District Court conditionally granted the defendants' motion to dismiss. Pertinently, the court ordered that:

> Delgado, Jorge Carcamo, Valdez and Isae Carcamo will be dismissed 90 days after the entry of this Memorandum and Order provided that defendants and third- and fourth-party defendants have:
>
> (1) participated in expedited discovery in the United States x x x;

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[10] *Id.* at 224.

[11] *Rollo* (G.R. No. 128398), p. 104.

[12] *Rollo* (G.R. No. 127856), p. 238.

(2) either waived or accepted service of process and waived any other jurisdictional defense within 40 days after the entry of this Memorandum and Order in any action commenced by a plaintiff in these actions in his home country or the country in which his injury occurred. Any plaintiff desiring to bring such an action will do so within 30 days after the entry of this Memorandum and Order;

(3) waived within 40 days after the entry of this Memorandum and Order any limitations-based defense that has matured since the commencement of these actions in the courts of Texas;

(4) stipulated within 40 days after the entry of this Memorandum and Order that any discovery conducted during the pendency of these actions may be used in any foreign proceeding to the same extent as if it had been conducted in proceedings initiated there; and

(5) submitted within 40 days after the entry of this Memorandum and Order an agreement binding them to satisfy any final judgment rendered in favor of plaintiffs by a foreign court.

x x x x x x x x x

Notwithstanding the dismissals that may result from this Memorandum and Order, in the event that the highest court of any foreign country finally affirms the dismissal for lack of jurisdiction of an action commenced by a plaintiff in these actions in his home country or the country in which he was injured, that plaintiff may return to this court and, upon proper motion, the court will resume jurisdiction over the action as if the case had never been dismissed for [*forum non conveniens*].[13]

Civil Case No. 5617 before the RTC of General Santos City and G.R. Nos. 125078 and 125598

In accordance with the above Memorandum and Order, a total of 336 plaintiffs from General Santos City (the petitioners in G.R. No. 125078, hereinafter referred to as NAVIDA, *et al.*) filed a **Joint Complaint**[14] in the RTC of General Santos City

[13] Records, Vol. I, pp. 92-98.

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

on August 10, 1995. The case was docketed as Civil Case No. 5617. Named as defendants therein were: Shell Oil Co. (SHELL); Dow Chemical Co. (DOW); Occidental Chemical Corp. (OCCIDENTAL); Dole Food Co., Inc., Dole Fresh Fruit Co., Standard Fruit Co., Standard Fruit and Steamship Co. (hereinafter collectively referred to as DOLE); Chiquita Brands, Inc. and Chiquita Brands International, Inc. (CHIQUITA); Del Monte Fresh Produce N.A. and Del Monte Tropical Fruit Co. (hereinafter collectively referred to as DEL MONTE); Dead Sea Bromine Co., Ltd.; Ameribrom, Inc.; Bromine Compounds, Ltd.; and Amvac Chemical Corp. (The aforementioned defendants are hereinafter collectively referred to as defendant companies.)

Navida, *et al.*, prayed for the payment of damages in view of the illnesses and injuries to the reproductive systems which they allegedly suffered because of their exposure to DBCP. They claimed, among others, that they were exposed to this chemical during the early 1970's up to the early 1980's when they used the same in the banana plantations where they worked at; and/or when they resided within the agricultural area where such chemical was used. Navida, *et al.*, claimed that their illnesses and injuries were due to the fault or negligence of each of the defendant companies in that they produced, sold and/or otherwise put into the stream of commerce DBCP-containing products. According to NAVIDA, *et al*., they were allowed to be exposed to the said products, which the defendant companies knew, or ought to have known, were highly injurious to the former's health and well-being.

Instead of answering the complaint, most of the defendant companies respectively filed their Motions for Bill of Particulars.[15] During the pendency of the motions, on March 13, 1996, NAVIDA, *et al*., filed an **Amended Joint Complaint**,[16] excluding Dead Sea Bromine Co., Ltd., Ameribrom, Inc., Bromine Compounds, Ltd. and Amvac Chemical Corp. as party defendants.

[15] DOLE filed its motion on December 28, 1995 (Records, Vol. I, pp. 527-535). DOW filed a similar motion on January 22, 1996 (*id.* at 581-586), while SHELL filed its own motion on February 12, 1996 (*id.* at 669-674). DEL MONTE filed its motion on February 29, 1996 (Records, Vol. II, pp. 699-714) and CHIQUITA filed its motion on February 29, 1996 (*id.* at 716-719).

[16] Records, Vol. II, pp. 720-735.

Again, the remaining defendant companies filed their various Motions for Bill of Particulars.[17] On May 15, 1996, DOW filed an Answer with Counterclaim.[18]

On May 20, 1996, without resolving the motions filed by the parties, the RTC of General Santos City issued an **Order** dismissing the complaint. First, the trial court determined that it did not have jurisdiction to hear the case, to wit:

> THE COMPLAINT FOR DAMAGES FILED WITH THE REGIONAL TRIAL COURT SHOULD BE DISMISSED FOR LACK OF JURISDICTION
>
> x x x x x x x x x
>
> The substance of the cause of action as stated in the complaint against the defendant foreign companies cites activity on their part which took place abroad and had occurred outside and beyond the territorial domain of the Philippines. These acts of defendants cited in the complaint included the manufacture of pesticides, their packaging in containers, their distribution through sale or other disposition, resulting in their becoming part of the stream of commerce.
>
> Accordingly, the subject matter stated in the complaint and which is uniquely particular to the present case, consisted of activity or course of conduct engaged in by foreign defendants outside Philippine territory, hence, outside and beyond the jurisdiction of Philippine Courts, including the present Regional Trial Court.[19]

Second, the RTC of General Santos City declared that the tort alleged by Navida, *et al.*, in their complaint is a tort category that is not recognized in Philippine laws. Said the trial court:

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[17] SHELL filed a Manifestation with Second Motion for Bill of Particulars on April 3, 1996 (Records, Vol. II, pp. 879-882). On even date, DOW and DOLE also filed their separate Motions for Bill of Particulars (*id.* at 895-901, 903-911). CHIQUITA filed its motion on April 8, 1996 (*id.* at 935-938), while DEL MONTE filed its motion on April 12, 1996 (*id.* at 940-956). OCCIDENTAL filed its motion on May 15, 1996 (*id.* at 1100-1105).

[18] Records, Vol. II, pp. 1085-1092.

[19] *Rollo* (G.R. No. 125078), Vol. I, pp. 74A-75.

THE TORT ASSERTED IN THE PRESENT COMPLAINT AGAINST DEFENDANT FOREIGN COMPANIES IS NOT WITHIN THE SUBJECT MATTER JURISDICTION OF THE REGIONAL TRIAL COURT, BECAUSE IT IS NOT A TORT CATEGORY WITHIN THE PURVIEW OF THE PHILIPPINE LAW

The specific tort asserted against defendant foreign companies in the present complaint is product liability tort. When the averments in the present complaint are examined in terms of the particular categories of tort recognized in the Philippine Civil Code, it becomes stark clear that such averments describe and identify the category of specific tort known as product liability tort. This is necessarily so, because it is the product manufactured by defendant foreign companies, which is asserted to be the proximate cause of the damages sustained by the plaintiff workers, and the liability of the defendant foreign companies, is premised on being the manufacturer of the pesticides.

It is clear, therefore, that the Regional Trial Court has jurisdiction over the present case, if and only if the Civil Code of the Philippines, or a suppletory special law prescribes a product liability tort, inclusive of and comprehending the specific tort described in the complaint of the plaintiff workers.[20]

Third, the RTC of General Santos City adjudged that Navida, *et al.*, were coerced into submitting their case to the Philippine courts, *viz*:

FILING OF CASES IN THE PHILIPPINES — COERCED AND ANOMALOUS

The Court views that the plaintiffs did not freely choose to file the instant action, but rather were coerced to do so, merely to comply with the U.S. District Court's Order dated July 11, 1995, and in order to keep open to the plaintiffs the opportunity to return to the U.S. District Court.[21]

Fourth, the trial court ascribed little significance to the voluntary appearance of the defendant companies therein, thus:

[20] *Id.* at 77.

[21] *Id.* at 78.

THE DEFENDANTS' SUBMISSION
TO JURISDICTION IS CONDITIONAL
AS IT IS ILLUSORY

Defendants have appointed their agents authorized to accept service of summons/processes in the Philippines pursuant to the agreement in the U.S. court that defendants will voluntarily submit to the jurisdiction of this court. While it is true that this court acquires jurisdiction over persons of the defendants through their voluntary appearance, it appears that such voluntary appearance of the defendants in this case is conditional. Thus in the "Defendants' Amended Agreement Regarding Conditions of Dismissal for Forum Non Conveniens" (Annex to the Complaint) filed with the U.S. District Court, defendants declared that "(t)he authority of each designated representative to accept service of process will become effective upon final dismissal of these actions by the Court." The decision of the U.S. District Court dismissing the case is not yet final and executory since both the plaintiffs and defendants appealed therefrom (par. 3(h), 3(i), Amended Complaint). Consequently, since the authority of the agent of the defendants in the Philippines is conditioned on the final adjudication of the case pending with the U.S. courts, the acquisition of jurisdiction by this court over the persons of the defendants is also conditional. x x x.

The appointment of agents by the defendants, being subject to a suspensive condition, thus produces no legal effect and is ineffective at the moment.[22]

Fifth, the RTC of General Santos City ruled that the act of NAVIDA, *et al.*, of filing the case in the Philippine courts violated the rules on forum shopping and *litis pendencia*. The trial court expounded:

THE JURISDICTION FROWNS UPON
AND PROHIBITS FORUM SHOPPING

This court frowns upon the fact that the parties herein are both vigorously pursuing their appeal of the decision of the U.S. District court dismissing the case filed thereat. To allow the parties to litigate in this court when they are actively pursuing the same cases in another forum, violates the rule on 'forum shopping' so abhorred in this jurisdiction. x x x.

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

x x x x x x x x x

THE FILING OF THE CASE IN U.S. DIVESTED THIS COURT OF ITS OWN JURISDICTION

Moreover, the filing of the case in the U.S. courts divested this court of its own jurisdiction. This court takes note that the U.S. District Court did not decline jurisdiction over the cause of action. The case was dismissed on the ground of forum non conveniens, which is really a matter of venue. By taking cognizance of the case, the U.S. District Court has, in essence, concurrent jurisdiction with this court over the subject matter of this case. It is settled that initial acquisition of jurisdiction divests another of its own jurisdiction. x x x.

x x x x x x x x x

THIS CASE IS BARRED BY THE RULE OF "*LITIS PENDENCIA*"

Furthermore, the case filed in the U.S. court involves the same parties, same rights and interests, as in this case. There exists *litis pendencia* since there are two cases involving the same parties and interests. The court would like to emphasize that in accordance with the rule on *litis pendencia* x x x; the subsequent case must be dismissed. Applying the foregoing [precept] to the case-at-bar, this court concludes that since the case between the parties in the U.S. is still pending, then this case is barred by the rule on "*litis pendencia*."[23]

In fine, the trial court held that:

It behooves this Court, then to dismiss this case. For to continue with these proceedings, would be violative of the constitutional provision on the Bill of Rights guaranteeing speedy disposition of cases (Ref. Sec. 16, Article III, Constitution). The court has no other choice. To insist on further proceedings with this case, as it is now presented, might accord this court a charming appearance. But the same insistence would actually thwart the very ends of justice which it seeks to achieve.

This evaluation and action is made not on account of but rather with due consideration to the fact that the dismissal of this case

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[23] *Id.* at 82-84.

does not necessarily deprive the parties — especially the plaintiffs — of their possible remedies. The court is cognizant that the Federal Court may resume proceedings of that earlier case between the herein parties involving the same acts or omissions as in this case.

WHEREFORE, in view of the foregoing considerations, this case is now considered DISMISSED.[24]

On June 4, 1996, the RTC of General Santos City likewise issued an **Order**,[25] dismissing DOW's Answer with Counterclaim.

CHIQUITA, DEL MONTE and SHELL each filed a motion for reconsideration[26] of the RTC Order dated May 20, 1996, while DOW filed a motion for reconsideration[27] of the RTC Order dated June 4, 1996. Subsequently, DOW and OCCIDENTAL also filed a Joint Motion for Reconsideration[28] of the RTC Order dated May 20, 1996.

In an **Order**[29] dated July 9, 1996, the RTC of General Santos City declared that it had already lost its jurisdiction over the case as it took into consideration the Manifestation of the counsel of NAVIDA, *et al.*, which stated that the latter had already filed a petition for review on *certiorari* before this Court.

CHIQUITA and SHELL filed their motions for reconsideration[30] of the above order.

On July 11, 1996, NAVIDA, *et al.*, filed a Petition for Review on *Certiorari* in order to assail the RTC Order dated May 20, 1996, which was docketed as **G.R. No. 125078**.

The RTC of General Santos City then issued an **Order**[31] dated August 14, 1996, which merely noted the incidents still

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[24] *Id.* at 85.

[25] Records, Vol. III, pp. 1205-1206.

[26] *Id.* at 1222-1241, 1243-1257, 1258-1278.

[27] *Id.* at 1303-1307.

[28] *Id.* at 1867-1879.

[29] *Id.* at 1410-1411.

[30] *Id.* at 1669-1674, 1689-1692.

[31] Records, Vol. IV, pp. 2064-2066.

pending in Civil Case No. 5617 and reiterated that it no longer had any jurisdiction over the case.

On August 30, 1996, DOW and OCCIDENTAL filed their Petition for Review on *Certiorari*,[32] challenging the orders of the RTC of General Santos City dated May 20, 1996, June 4, 1996 and July 9, 1996. Their petition was docketed as **G.R. No. 125598**.

In their petition, DOW and OCCIDENTAL aver that the RTC of General Santos City erred in ruling that it has no jurisdiction over the subject matter of the case as well as the persons of the defendant companies.

In a **Resolution**[33] dated October 7, 1996, this Court resolved to consolidate G.R. No. 125598 with G.R. No. 125078.

CHIQUITA filed a Petition for Review on *Certiorari*,[34] which sought the reversal of the RTC Orders dated May 20, 1996, July 9, 1996 and August 14, 1996. The petition was docketed as G.R. No. 126018. In a Resolution[35] dated November 13, 1996, the Court dismissed the aforesaid petition for failure of CHIQUITA to show that the RTC committed grave abuse of discretion. CHIQUITA filed a Motion for Reconsideration,[36] but the same was denied through a Resolution[37] dated January 27, 1997.

Civil Case No. 24,251-96 before the RTC of Davao City and G.R. Nos. 126654, 127856, and 128398

Another joint complaint for damages against SHELL, DOW, OCCIDENTAL, DOLE, DEL MONTE, and CHIQUITA was filed before Branch 16 of the RTC of Davao City by 155 plaintiffs from Davao City. This case was docketed as Civil Case No.

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[32] *Rollo* (G.R. No. 125598), pp. 10-59.

[33] *Id.* at 158.

[34] Records, Vol. IV, pp. 1931-1969.

[35] *Id.* at 2465-2466.

[36] *Id.* at 2474-2485.

[37] *Id.* at 2512.

24,251-96. These plaintiffs (the petitioners in G.R. No. 126654, hereinafter referred to as ABELLA, *et al.*) amended their Joint-Complaint on May 21, 1996.[38]

Similar to the complaint of NAVIDA, *et al.*, ABELLA, *et al.*, alleged that, as workers in the banana plantation and/or as residents near the said plantation, they were made to use and/or were exposed to nematocides, which contained the chemical DBCP. According to ABELLA, *et al.*, such exposure resulted in "serious and permanent injuries to their health, including, but not limited to, sterility and severe injuries to their reproductive capacities."[39] ABELLA, *et al.*, claimed that the defendant companies manufactured, produced, sold, distributed, used, and/or made available in commerce, DBCP without warning the users of its hazardous effects on health, and without providing instructions on its proper use and application, which the defendant companies knew or ought to have known, had they exercised ordinary care and prudence.

Except for DOW, the other defendant companies filed their respective motions for bill of particulars to which ABELLA, *et al.*, filed their opposition. DOW and DEL MONTE filed their respective Answers dated May 17, 1996 and June 24, 1996.

The RTC of Davao City, however, junked Civil Case No. 24,251-96 in its **Order** dated October 1, 1996, which, in its entirety, reads:

> Upon a thorough review of the Complaint and Amended Complaint For: Damages filed by the plaintiffs against the defendants Shell Oil Company, DOW Chemicals Company, Occidental Chemical Corporation, Standard Fruit Company, Standard Fruit and Steamship, DOLE Food Company, DOLE Fresh Fruit Company, Chiquita Brands, Inc., Chiquita Brands International, Del Monte Fresh Produce, N.A. and Del Monte Tropical Fruits Co., all foreign corporations with Philippine Representatives, the Court, as correctly pointed out by one of the defendants, is convinced that plaintiffs "would have this Honorable Court dismiss the case to pave the way for their getting

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[38] Jesus Abayon, the first plaintiff named in the orginal complaint, was dropped in the amended joint complaint.

[39] *Rollo* (G.R. No. 126654), p. 47.

an affirmance by the Supreme Court" (#10 of Defendants' Del Monte Fresh Produce, N.A. and Del Monte Tropical Fruit Co., Reply to Opposition dated July 22, 1996). Consider these:

> 1) In the original Joint Complaint, plaintiffs state that: defendants have no properties in the Philippines; they have no agents as well (par. 18); plaintiffs are suing the defendants for tortuous acts committed by these foreign corporations on their respective countries, as plaintiffs, after having elected to sue in the place of defendants' residence, are now compelled by a decision of a Texas District Court to file cases under torts in this jurisdiction for causes of actions which occurred abroad (par. 19); a petition was filed by same plaintiffs against same defendants in the Courts of Texas, USA, plaintiffs seeking for payment of damages based on negligence, strict liability, conspiracy and international tort theories (par. 27); upon defendants' Motion to Dismiss on Forum non [conveniens], said petition was provisionally dismissed on condition that these cases be filed in the Philippines or before 11 August 1995 (Philippine date; Should the Philippine Courts refuse or deny jurisdiction, the U. S. Courts will reassume jurisdiction.)
>
> 11. In the Amended Joint Complaint, plaintiffs aver that: on 11 July 1995, the Federal District Court issued a Memorandum and Order conditionally dismissing several of the consolidated actions including those filed by the Filipino complainants. One of the conditions imposed was for the plaintiffs to file actions in their home countries or the countries in which they were injured x x x. Notwithstanding, the Memorandum and [O]rder further provided that should the highest court of any foreign country affirm the dismissal for lack of jurisdictions over these actions filed by the plaintiffs in their home countries [or] the countries where they were injured, the said plaintiffs may return to that court and, upon proper motion, the Court will resume jurisdiction as if the case had never been dismissed for forum non conveniens.

The Court however is constrained to dismiss the case at bar not solely on the basis of the above but because it shares the opinion of legal experts given in the interview made by the Inquirer in its Special report "Pesticide Cause Mass Sterility," to wit:

> 1. Former Justice Secretary Demetrio Demetria in a May 1995 opinion said: The Philippines should be an inconvenient

forum to file this kind of damage suit against foreign companies since the causes of action alleged in the petition do not exist under Philippine laws. There has been no decided case in Philippine Jurisprudence awarding to those adversely affected by DBCP. This means there is no available evidence which will prove and disprove the relation between sterility and DBCP.

2. Retired Supreme Court Justice Abraham Sarmiento opined that while a class suit is allowed in the Philippines the device has been employed strictly. Mass sterility will not qualify as a class suit injury within the contemplation of Philippine statute.

3. Retired High Court Justice Rodolfo Nocom stated that there is simply an absence of doctrine here that permits these causes to be heard. No product liability ever filed or tried here.

Case ordered dismissed.[40]

Docketed as **G.R. No. 126654**, the petition for review, filed on November 12, 1996 by ABELLA, *et al.*, assails before this Court the above-quoted order of the RTC of Davao City.

ABELLA, *et al.*, claim that the RTC of Davao City erred in dismissing Civil Case No. 24,251-96 on the ground of lack of jurisdiction.

According to ABELLA, *et al.*, the RTC of Davao City has jurisdiction over the subject matter of the case since Articles 2176 and 2187 of the Civil Code are broad enough to cover the acts complained of and to support their claims for damages.

ABELLA, *et al.*, further aver that the dismissal of the case, based on the opinions of legal luminaries reported in a newspaper, by the RTC of Davao City is bereft of basis. According to them, their cause of action is based on quasi-delict under Article 2176 of the Civil Code. They also maintain that the absence of jurisprudence regarding the award of damages in favor of those adversely affected by the DBCP does not preclude them from

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

presenting evidence to prove their allegations that their exposure to DBCP caused their sterility and/or infertility.

SHELL, DOW, and CHIQUITA each filed their respective motions for reconsideration of the Order dated October 1, 1996 of the RTC of Davao City. DEL MONTE also filed its motion for reconsideration, which contained an additional motion for the inhibition of the presiding judge.

The presiding judge of Branch 16 then issued an Order[41] dated December 2, 1996, voluntarily inhibiting himself from trying the case. Thus, the case was re-raffled to Branch 13 of the RTC of Davao City.

In an **Order**[42] dated December 16, 1996, the RTC of Davao City affirmed the Order dated October 1, 1996, and denied the respective motions for reconsideration filed by defendant companies.

Thereafter, CHIQUITA filed a Petition for Review dated March 5, 1997, questioning the Orders dated October 1, 1996 and December 16, 1996 of the RTC of Davao City. This case was docketed as **G.R. No. 128398**.

In its petition, CHIQUITA argues that the RTC of Davao City erred in dismissing the case *motu proprio* as it acquired jurisdiction over the subject matter of the case as well as over the persons of the defendant companies which voluntarily appeared before it. CHIQUITA also claims that the RTC of Davao City cannot dismiss the case simply on the basis of opinions of alleged legal experts appearing in a newspaper article.

Initially, this Court in its Resolution[43] dated July 28, 1997, dismissed the petition filed by CHIQUITA for submitting a defective certificate against forum shopping. CHIQUITA, however, filed a motion for reconsideration, which was granted by this Court in the Resolution[44] dated October 8, 1997.

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[41] *Rollo* (G.R. No. 128398), p. 81.

[42] *Id.* at 82.

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

[44] *Id.* at 211-212.

On March 7, 1997, DEL MONTE also filed its petition for review on *certiorari* before this Court assailing the above-mentioned orders of the RTC of Davao City. Its petition was docketed as **G.R. No. 127856**.

DEL MONTE claims that the RTC of Davao City has jurisdiction over Civil Case No. 24,251-96, as defined under the law and that the said court already obtained jurisdiction over its person by its voluntary appearance and the filing of a motion for bill of particulars and, later, an answer to the complaint. According to DEL MONTE, the RTC of Davao City, therefore, acted beyond its authority when it dismissed the case *motu proprio* or without any motion to dismiss from any of the parties to the case.

In the Resolutions dated February 10, 1997, April 28, 1997, and March 10, 1999, this Court consolidated G.R. Nos. 125078, 125598, 126654, 127856, and 128398.

The Consolidated Motion to Drop DOW, OCCIDENTAL, and SHELL as Party-Respondents filed by NAVIDA, et al. and ABELLA, et al.

On September 26, 1997, NAVIDA, *et al.*, and ABELLA, *et al.*, filed before this Court a Consolidated Motion (to Drop Party-Respondents).[45] The plaintiff claimants alleged that they had amicably settled their cases with DOW, OCCIDENTAL, and SHELL sometime in July 1997. This settlement agreement was evidenced by facsimiles of the "Compromise Settlement, Indemnity, and Hold Harmless Agreement," which were attached to the said motion. Pursuant to said agreement, the plaintiff claimants sought to withdraw their petitions as against DOW, OCCIDENTAL, and SHELL.

DOLE, DEL MONTE and CHIQUITA, however, opposed the motion, as well as the settlement entered into between the plaintiff claimants and DOW, OCCIDENTAL, and SHELL.

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[45] *Rollo* (G.R. No. 125078), Vol. I, pp. 1053-1056.

The Memoranda of the Parties

Considering the allegations, issues, and arguments adduced by the parties, this Court, in a Resolution dated June 22, 1998,[46] required all the parties to submit their respective memoranda.

CHIQUITA filed its Memorandum on August 28, 1998;[47] SHELL asked to be excused from the filing of a memorandum alleging that it had already executed a compromise agreement with the plaintiff claimants.[48] DOLE filed its Memorandum on October 12, 1998[49] while DEL MONTE filed on October 13, 1998.[50] NAVIDA, *et al.*, and ABELLA, *et al.*, filed their Consolidated Memorandum on February 3, 1999;[51] and DOW and OCCIDENTAL jointly filed a Memorandum on December 23, 1999.[52]

The Motion to Withdraw Petition for Review in G.R. No. 125598

On July 13, 2004, DOW and OCCIDENTAL filed a Motion to Withdraw Petition for Review in G.R. No. 125598,[53] explaining that the said petition "is already moot and academic and no longer presents a justiciable controversy" since they have already entered into an amicable settlement with NAVIDA, *et al.* DOW and OCCIDENTAL added that they have fully complied with their obligations set forth in the 1997 Compromise Agreements.

DOLE filed its Manifestation dated September 6, 2004,[54] interposing no objection to the withdrawal of the petition, and

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[46] *Rollo* (G.R. No. 128398), pp. 238-240.

[47] *Rollo* (G.R. No. 125078), Vol. I, pp. 1148-1190.

[48] *Rollo* (G.R. No. 126654), pp. 777-781.

[49] *Rollo* (G.R. No. 125078), Vol. I, pp. 2289-2411.

[50] *Id.* at 2421-2460.

[51] *Id.* at 2486-2511.

[52] *Id.*, Vol. II, pp. 2551-2559.

[53] *Rollo* (G.R. No. 125598), pp. 796-804.

[54] *Id.* at 807-811.

further stating that they maintain their position that DOW and OCCIDENTAL, as well as other settling defendant companies, should be retained as defendants for purposes of prosecuting the cross-claims of DOLE, in the event that the complaint below is reinstated.

NAVIDA, *et al.*, also filed their Comment dated September 14, 2004,[55] stating that they agree with the view of DOW and OCCIDENTAL that the petition in G.R. No. 125598 has become moot and academic because Civil Case No. 5617 had already been amicably settled by the parties in 1997.

On September 27, 2004, DEL MONTE filed its Comment on Motion to Withdraw Petition for Review Filed by Petitioners in G.R. No. 125598,[56] stating that it has no objections to the withdrawal of the petition filed by DOW and OCCIDENTAL in G.R. No. 125598.

In a Resolution[57] dated October 11, 2004, this Court granted, among others, the motion to withdraw petition for review filed by DOW and OCCIDENTAL.

THE ISSUES

In their Consolidated Memorandum, NAVIDA, *et al.*, and ABELLA, *et al.*, presented the following issues for our consideration:

IN REFUTATION

I. THE COURT DISMISSED THE CASE DUE TO LACK OF JURISDICTION.

a) The court did not simply dismiss the case because it was filed in bad faith with petitioners intending to have the same dismissed and returned to the Texas court.

b) The court dismissed the case because it was convinced that it did not have jurisdiction.

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[55] *Rollo* (G.R. No. 125078), Vol. II, pp. 2901-2903.

[56] *Id.* at 2916-2921.

[57] *Rollo* (G.R. No. 125598), pp. 812-813.

IN SUPPORT OF THE PETITION

II. THE TRIAL COURT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

a. The acts complained of occurred within Philippine territory.

b. Art. 2176 of the Civil Code of the Philippines is broad enough to cover the acts complained of.

c. Assumption of jurisdiction by the U.S. District Court over petitioner[s'] claims did not divest Philippine [c]ourts of jurisdiction over the same.

d. The Compromise Agreement and the subsequent Consolidated Motion to Drop Party Respondents Dow, Occidental and Shell does not unjustifiably prejudice remaining respondents Dole, Del Monte and Chiquita.[58]

DISCUSSION

On the issue of jurisdiction

Essentially, the crux of the controversy in the petitions at bar is whether the RTC of General Santos City and the RTC of Davao City erred in dismissing Civil Case Nos. 5617 and 24,251-96, respectively, for lack of jurisdiction.

Remarkably, none of the parties to this case claims that the courts *a quo* are bereft of jurisdiction to determine and resolve the above-stated cases. All parties contend that the RTC of General Santos City and the RTC of Davao City have jurisdiction over the action for damages, specifically for approximately ₱2.7 million for each of the plaintiff claimants.

NAVIDA, *et al.*, and ABELLA, *et al.*, argue that the allegedly tortious acts and/or omissions of defendant companies occurred within Philippine territory. Specifically, the use of and exposure to DBCP that was manufactured, distributed or otherwise put into the stream of commerce by defendant companies happened in the Philippines. Said fact allegedly constitutes reasonable basis for our courts to assume jurisdiction over the case.

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[58] *Rollo* (G.R. No. 125078), Vol. I, p. 2496.

Furthermore, NAVIDA, *et al.*, and ABELLA, *et al.*, assert that the provisions of Chapter 2 of the Preliminary Title of the Civil Code, as well as Article 2176 thereof, are broad enough to cover their claim for damages. Thus, NAVIDA, *et al.*, and ABELLA, *et al.*, pray that the respective rulings of the RTC of General Santos City and the RTC of Davao City in Civil Case Nos. 5617 and 24,251-96 be reversed and that the said cases be remanded to the courts *a quo* for further proceedings.

DOLE similarly maintains that the acts attributed to defendant companies constitute a quasi-delict, which falls under Article 2176 of the Civil Code. In addition, DOLE states that if there were no actionable wrongs committed under Philippine law, the courts *a quo* should have dismissed the civil cases on the ground that the Amended Joint-Complaints of NAVIDA, *et al.*, and ABELLA, *et al.*, stated no cause of action against the defendant companies. DOLE also argues that if indeed there is no positive law defining the alleged acts of defendant companies as actionable wrong, Article 9 of the Civil Code dictates that a judge may not refuse to render a decision on the ground of insufficiency of the law. The court may still resolve the case, applying the customs of the place and, in the absence thereof, the general principles of law. DOLE posits that the Philippines is the *situs* of the tortious acts allegedly committed by defendant companies as NAVIDA, *et al.*, and ABELLA, *et al.*, point to their alleged exposure to DBCP which occurred in the Philippines, as the cause of the sterility and other reproductive system problems that they allegedly suffered. Finally, DOLE adds that the RTC of Davao City gravely erred in relying upon newspaper reports in dismissing Civil Case No. 24,251-96 given that newspaper articles are hearsay and without any evidentiary value. Likewise, the alleged legal opinions cited in the newspaper reports were taken judicial notice of, without any notice to the parties. DOLE, however, opines that the dismissal of Civil Case Nos. 5617 and 24,251-96 was proper, given that plaintiff claimants merely prosecuted the cases with the sole intent of securing a dismissal of the actions for the purpose of convincing the U.S. Federal District Court to re-assume jurisdiction over the cases.

In a similar vein, CHIQUITA argues that the courts *a quo* had jurisdiction over the subject matter of the cases filed before them. The Amended Joint-Complaints sought approximately ₱2.7 million in damages for each plaintiff claimant, which amount falls within the jurisdiction of the RTC. CHIQUITA avers that the pertinent matter is the place of the alleged exposure to DBCP, not the place of manufacture, packaging, distribution, sale, *etc*., of the said chemical. This is in consonance with the *lex loci delicti commisi* theory in determining the *situs* of a tort, which states that the law of the place where the alleged wrong was committed will govern the action. CHIQUITA and the other defendant companies also submitted themselves to the jurisdiction of the RTC by making voluntary appearances and seeking for affirmative reliefs during the course of the proceedings. None of the defendant companies ever objected to the exercise of jurisdiction by the courts *a quo* over their persons. CHIQUITA, thus, prays for the remand of Civil Case Nos. 5617 and 24,251-96 to the RTC of General Santos City and the RTC of Davao City, respectively.

The RTC of General Santos City and the RTC of Davao City have jurisdiction over Civil Case Nos. 5617 and 24,251-96, respectively

The rule is settled that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the plaintiffs are entitled to all or some of the claims asserted therein.[59] Once vested by law, on a particular court or body, the jurisdiction over the subject matter or nature of the action cannot be dislodged by anybody other than by the legislature through the enactment of a law.

At the time of the filing of the complaints, the jurisdiction of the RTC in civil cases under Batas Pambansa Blg. 129, as amended by Republic Act No. 7691, was:

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[59] *Barangay Piapi v. Talip*, 506 Phil. 392, 396 (2005); *Radio Communications of the Philippines, Inc. v. Court of Appeals*, 435 Phil. 62, 66 (2002).

SEC. 19. *Jurisdiction in civil cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (₱100,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Two hundred thousand pesos (₱200,000.00).[60]

Corollary thereto, Supreme Court Administrative Circular No. 09-94, states:

2. The exclusion of the term "damages of whatever kind" in determining the jurisdictional amount under Section 19 (8) and Section 33 (1) of B.P. Blg. 129, as amended by R.A. No. 7691, applies to cases where the damages are merely incidental to or a consequence of the main cause of action. However, in cases where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court.

Here, NAVIDA, *et al.*, and ABELLA, *et al.*, sought in their similarly-worded Amended Joint-Complaints filed before the courts *a quo*, the following prayer:

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed that after hearing, judgment be rendered in favor of the plaintiffs ordering the defendants:

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[60] Under Republic Act No. 7691, the jurisdictional amounts in civil cases would later be adjusted as provided in Section 5, to wit:

SEC. 5. After five (5) years from the effectivity of this Act, the jurisdictional amounts mentioned in Sec. 19(3), (4), and (8); and Sec. 33(1) of Batas Pambansa Blg. 129 as amended by this Act, shall be adjusted to Two hundred thousand pesos (₱200,000.00). Five (5) years thereafter, such jurisdictional amounts shall be adjusted further to Three hundred thousand pesos (₱300,000.00): *Provided, however,* That in the case of Metro Manila, the abovementioned jurisdictional amounts shall be adjusted after five (5) years from the effectivity of this Act to Four hundred thousand pesos (₱400,000.00).

a) TO PAY EACH PLAINTIFF moral damages in the amount of One Million Five Hundred Thousand Pesos (₱1,500,00.00);

b) TO PAY EACH PLAINTIFF nominal damages in the amount of Four Hundred Thousand Pesos (₱400,000.00) each;

c) TO PAY EACH PLAINTIFF exemplary damages in the amount of Six Hundred Thousand Pesos (₱600,000.00);

d) TO PAY EACH PLAINTIFF attorneys fees of Two Hundred Thousand Pesos (₱200,000.00); and

e) TO PAY THE COSTS of the suit.[61]

From the foregoing, it is clear that the claim for damages is the main cause of action and that the total amount sought in the complaints is approximately ₱2.7 million for each of the plaintiff claimants. The RTCs unmistakably have jurisdiction over the cases filed in General Santos City and Davao City, as both claims by NAVIDA, *et al.*, and ABELLA, *et al.*, fall within the purview of the definition of the jurisdiction of the RTC under Batas Pambansa Blg. 129.

Moreover, the allegations in both Amended Joint-Complaints narrate that:

THE CAUSES OF ACTION

4. The Defendants manufactured, sold, distributed, used, AND/OR MADE AVAILABLE IN COMMERCE nematocides containing the chemical dibromochloropropane, commonly known as DBCP. THE CHEMICAL WAS USED AGAINST the parasite known as the nematode, which plagued banana plantations, INCLUDING THOSE in the Philippines. AS IT TURNED OUT, DBCP not only destroyed nematodes. IT ALSO CAUSED ILL-EFFECTS ON THE HEALTH OF PERSONS EXPOSED TO IT AFFECTING the human reproductive system as well.

5. **The plaintiffs were exposed to DBCP in the 1970s up to the early 1980s WHILE (a) they used this product in the banana plantations WHERE they were employed, and/or (b) they resided within the agricultural area WHERE IT WAS USED**. As a result

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[61] *Rollo* (G.R. No. 125078), Vol. I, pp. 99-100.

of such exposure, the plaintiffs suffered serious and permanent injuries TO THEIR HEALTH, including, but not limited to, STERILITY and severe injuries to their reproductive capacities.

6. **THE DEFENDANTS WERE AT FAULT OR WERE NEGLIGENT IN THAT THEY MANUFACTURED, produced, sold, and/or USED DBCP and/or otherwise, PUT THE SAME into the stream of commerce, WITHOUT INFORMING THE USERS OF ITS HAZARDOUS EFFECTS ON HEALTH AND/ OR WITHOUT INSTRUCTIONS ON ITS PROPER USE AND APPLICATION.** THEY allowed Plaintiffs to be exposed to, DBCP-containing materials which THEY knew, or in the exercise of ordinary care and prudence ought to have known, were highly harmful and injurious to the Plaintiffs' health and well-being.

7. The Defendants WHO MANUFACTURED, PRODUCED, SOLD, DISTRIBUTED, MADE AVAILABLE OR PUT DBCP INTO THE STREAM OF COMMERCE were negligent OR AT FAULT in that they, AMONG OTHERS:

a. Failed to adequately warn Plaintiffs of the dangerous characteristics of DBCP, or to cause their subsidiaries or affiliates to so warn plaintiffs;

b. Failed to provide plaintiffs with information as to what should be reasonably safe and sufficient clothing and proper protective equipment and appliances, if any, to protect plaintiffs from the harmful effects of exposure to DBCP, or to cause their subsidiaries or affiliates to do so;

c. Failed to place adequate warnings, in a language understandable to the worker, on containers of DBCP-containing materials to warn of the dangers to health of coming into contact with DBCP, or to cause their subsidiaries or affiliates to do so;

d. Failed to take reasonable precaution or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and applying DBCP, or to cause their subsidiaries or affiliates to do so;

e. Failed to test DBCP prior to releasing these products for sale, or to cause their subsidiaries or affiliates to do so; and

f. Failed to reveal the results of tests conducted on DBCP to each plaintiff, governmental agencies and the public, or to cause their subsidiaries or affiliate to do so.

8. The illnesses and injuries of each plaintiff are also due to the FAULT or negligence of defendants Standard Fruit Company, Dole Fresh Fruit Company, Dole Food Company, Inc., Chiquita Brands, Inc. and Chiquita Brands International, Inc. in that they failed to exercise reasonable care to prevent each plaintiff's harmful exposure to DBCP-containing products which defendants knew or should have known were hazardous to each plaintiff in that they, AMONG OTHERS:

a. Failed to adequately supervise and instruct Plaintiffs in the safe and proper application of DBCP-containing products;

b. Failed to implement proper methods and techniques of application of said products, or to cause such to be implemented;

c. Failed to warn Plaintiffs of the hazards of exposure to said products or to cause them to be so warned;

d. Failed to test said products for adverse health effects, or to cause said products to be tested;

e. Concealed from Plaintiffs information concerning the observed effects of said products on Plaintiffs;

f. Failed to monitor the health of plaintiffs exposed to said products;

g. Failed to place adequate labels on containers of said products to warn them of the damages of said products; and

h. Failed to use substitute nematocides for said products or to cause such substitutes to [be] used.[62] (Emphasis supplied and words in brackets ours.)

Quite evidently, the allegations in the Amended Joint-Complaints of NAVIDA, *et al.*, and ABELLA, *et al.*, attribute to defendant companies certain acts and/or omissions which led to their exposure to nematocides containing the chemical DBCP. According to NAVIDA, *et al.*, and ABELLA, *et al.*, such exposure

[62] *Id.* at 95-98.

to the said chemical caused ill effects, injuries and illnesses, specifically to their reproductive system.

Thus, these allegations in the complaints constitute the cause of action of plaintiff claimants — a quasi-delict, which under the Civil Code is defined as an act, or omission which causes damage to another, there being fault or negligence. To be precise, Article 2176 of the Civil Code provides:

> Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

As specifically enumerated in the amended complaints, NAVIDA, *et al.*, and ABELLA, *et al.*, point to the acts and/or omissions of the defendant companies in manufacturing, producing, selling, using, and/or otherwise putting into the stream of commerce, nematocides which contain DBCP, "without informing the users of its hazardous effects on health and/or without instructions on its proper use and application."[63]

Verily, in *Citibank, N.A. v. Court of Appeals*,[64] this Court has always reminded that jurisdiction of the court over the subject matter of the action is determined by the allegations of the complaint, irrespective of whether or not the plaintiffs are entitled to recover upon all or some of the claims asserted therein. The jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendants. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.

Clearly then, the acts and/or omissions attributed to the defendant companies constitute a quasi-delict which is the basis

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[63] *Rollo* (G.R. No. 126654), p. 47.

[64] 359 Phil. 719, 727 (1998).

for the claim for damages filed by NAVIDA, *et al.*, and ABELLA, *et al.*, with individual claims of approximately ₱2.7 million for each plaintiff claimant, which obviously falls within the purview of the civil action jurisdiction of the RTCs.

Moreover, the injuries and illnesses, which NAVIDA, *et al.*, and ABELLA, *et al.*, allegedly suffered resulted from their exposure to DBCP while they were employed in the banana plantations located in the Philippines or while they were residing within the agricultural areas also located in the Philippines. The factual allegations in the Amended Joint-Complaints all point to their cause of action, which undeniably **occurred in the Philippines**. The RTC of General Santos City and the RTC of Davao City obviously have reasonable basis to assume jurisdiction over the cases.

It is, therefore, error on the part of the courts *a quo* when they dismissed the cases on the ground of lack of jurisdiction on the mistaken assumption that the cause of action narrated by NAVIDA, *et al.*, and ABELLA, *et al.*, took place abroad and had occurred outside and beyond the territorial boundaries of the Philippines, *i.e.*, "the manufacture of the pesticides, their packaging in containers, their distribution through sale or other disposition, resulting in their becoming part of the stream of commerce,"[65] and, hence, outside the jurisdiction of the RTCs.

Certainly, the cases below are not criminal cases where territoriality, or the *situs* of the act complained of, would be determinative of jurisdiction and venue for trial of cases. In *personal* civil actions, such as claims for payment of damages, the Rules of Court allow the action to be commenced and tried in the appropriate court, where any of the plaintiffs or defendants resides, or in the case of a non-resident defendant, where he may be found, at the election of the plaintiff.[66]

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[65] Order dated May 20, 1996 of the General Santos City RTC, *Rollo* (G.R. No. 125078), Vol. I, pp. 72-86; penned by Judge Teodoro A. Dizon, Jr.

[66] Rules of Court, Rule 4, Section 2.

In a very real sense, most of the evidence required to prove the claims of NAVIDA, *et al.*, and ABELLA, *et al.*, are available only in the Philippines. First, plaintiff claimants are all residents of the Philippines, either in General Santos City or in Davao City. Second, the specific areas where they were allegedly exposed to the chemical DBCP are within the territorial jurisdiction of the courts *a quo* wherein NAVIDA, *et al.*, and ABELLA, *et al.*, initially filed their claims for damages. Third, the testimonial and documentary evidence from important witnesses, such as doctors, co-workers, family members and other members of the community, would be easier to gather in the Philippines. Considering the great number of plaintiff claimants involved in this case, it is not far-fetched to assume that voluminous records are involved in the presentation of evidence to support the claim of plaintiff claimants. Thus, these additional factors, coupled with the fact that the alleged cause of action of NAVIDA, *et al.*, and ABELLA, *et al.*, against the defendant companies for damages **occurred in the Philippines**, demonstrate that, apart from the RTC of General Santos City and the RTC of Davao City having jurisdiction over the subject matter in the instant civil cases, they are, indeed, the convenient fora for trying these cases.[67]

The RTC of General Santos City and the RTC of Davao City validly acquired jurisdiction over the persons of all the defendant companies

It is well to stress again that none of the parties claims that the courts *a quo* lack jurisdiction over the cases filed before them. All parties are one in asserting that the RTC of General Santos City and the RTC of Davao City have validly acquired jurisdiction over the persons of the defendant companies in the action below. All parties voluntarily, unconditionally and knowingly appeared and submitted themselves to the jurisdiction of the courts *a quo*.

Rule 14, Section 20 of the 1997 Rules of Civil Procedure provides that "[t]he defendant's voluntary appearance in the

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[67] See *Saudi Arabian Airlines v. Court of Appeals*, 358 Phil. 105 (1998).

action shall be equivalent to service of summons." In this connection, all the defendant companies designated and authorized representatives to receive summons and to represent them in the proceedings before the courts *a quo*. All the defendant companies submitted themselves to the jurisdiction of the courts *a quo* by making several voluntary appearances, by praying for various affirmative reliefs, and by actively participating during the course of the proceedings below.

In line herewith, this Court, in *Meat Packing Corporation of the Philippines v. Sandiganbayan*,[68] held that jurisdiction over the person of the defendant in civil cases is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons. Furthermore, the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court or body's jurisdiction.[69]

Thus, the RTC of General Santos City and the RTC of Davao City have validly acquired jurisdiction over the persons of the defendant companies, as well as over the subject matter of the instant case. What is more, this jurisdiction, which has been acquired and has been vested on the courts *a quo*, continues until the termination of the proceedings.

It may also be pertinently stressed that "jurisdiction" is different from the "exercise of jurisdiction." Jurisdiction refers to the authority to decide a case, not the orders or the decision rendered therein. Accordingly, where a court has jurisdiction over the persons of the defendants and the subject matter, as in the case of the courts *a quo*, the decision on all questions arising therefrom is but an exercise of such jurisdiction. Any error that the court may commit in the exercise of its jurisdiction is merely an error of judgment, which does not affect its authority to decide the case, much less divest the court of the jurisdiction over the case.[70]

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[68] 411 Phil. 959 (2001).

[69] *Id.* at 977-978.

[70] *Platinum Tours and Travel, Inc. v. Panlilio*, 457 Phil. 961, 967-968 (2003).

Plaintiffs' purported bad faith in filing the subject civil cases in Philippine courts

Anent the insinuation by DOLE that the plaintiff claimants filed their cases in bad faith merely to procure a dismissal of the same and to allow them to return to the forum of their choice, this Court finds such argument much too speculative to deserve any merit.

It must be remembered that this Court does not rule on allegations that are unsupported by evidence on record. This Court does not rule on allegations which are manifestly conjectural, as these may not exist at all. This Court deals with facts, not fancies; on realities, not appearances. When this Court acts on appearances instead of realities, justice and law will be short-lived.[71] This is especially true with respect to allegations of bad faith, in line with the basic rule that good faith is always presumed and bad faith must be proved.[72]

In sum, considering the fact that the RTC of General Santos City and the RTC of Davao City have jurisdiction over the subject matter of the amended complaints filed by NAVIDA, *et al.*, and ABELLA, *et al.*, and that the courts *a quo* have also acquired jurisdiction over the persons of all the defendant companies, it therefore, behooves this Court to order the remand of Civil Case Nos. 5617 and 24,251-96 to the RTC of General Santos City and the RTC of Davao City, respectively.

On the issue of the dropping of DOW, OCCIDENTAL and SHELL as respondents in view of their amicable settlement with NAVIDA, et al., and ABELLA, et al.

NAVIDA, *et al.*, and ABELLA, *et al.*, are further praying that DOW, OCCIDENTAL and SHELL be dropped as respondents

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[71] *ABAKADA Guro Party List Officers Alcantara & Albano v. The Honorable Executive Secretary Ermita,* 506 Phil. 1, 116 (2005).

[72] *Andrade v. Court of Appeals,* 423 Phil. 30, 43 (2001).

in G.R. Nos. 125078 and 126654, as well as in Civil Case Nos. 5617 and 24,251-96. The non-settling defendants allegedly manifested that they intended to file their cross-claims against their co-defendants who entered into compromise agreements. NAVIDA, *et al.*, and ABELLA, *et al.*, argue that the non-settling defendants did not aver any cross-claim in their answers to the complaint and that they subsequently sought to amend their answers to plead their cross-claims only after the settlement between the plaintiff claimants and DOW, OCCIDENTAL, and SHELL were executed. NAVIDA, *et al.*, and ABELLA, *et al.*, therefore, assert that the cross-claims are already barred.

In their Memoranda, CHIQUITA and DOLE are opposing the above motion of NAVIDA, *et al.*, and ABELLA, *et al.*, since the latter's Amended Complaints cited several instances of tortious conduct that were allegedly committed jointly and severally by the defendant companies. This solidary obligation on the part of all the defendants allegedly gives any co-defendant the statutory right to proceed against the other co-defendants for the payment of their respective shares. Should the subject motion of NAVIDA, *et al.*, and ABELLA, *et al.*, be granted, and the Court subsequently orders the remand of the action to the trial court for continuance, CHIQUITA and DOLE would allegedly be deprived of their right to prosecute their cross-claims against their other co-defendants. Moreover, a third party complaint or a separate trial, according to CHIQUITA, would only unduly delay and complicate the proceedings. CHIQUITA and DOLE similarly insist that the motion of NAVIDA, *et al.*, and ABELLA, *et al.*, to drop DOW, SHELL and OCCIDENTAL as respondents in G.R. Nos. 125078 and 126654, as well as in Civil Case Nos. 5617 and 24,251-96, be denied.

Incidentally, on April 2, 2007, after the parties have submitted their respective memoranda, DEL MONTE filed a Manifestation and Motion[73] before the Court, stating that similar settlement agreements were allegedly executed by the plaintiff claimants with DEL MONTE and CHIQUITA sometime in 1999.

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[73] *Rollo* (G.R. No. 125078), Vol. II, pp. 3220-3234.

Purportedly included in the agreements were Civil Case Nos. 5617 and 24,251-96. Attached to the said manifestation were copies of the Compromise Settlement, Indemnity, and Hold Harmless Agreement between DEL MONTE and the settling plaintiffs, as well as the Release in Full executed by the latter.[74] DEL MONTE specified therein that there were "only four (4) plaintiffs in Civil Case No. 5617 who are claiming against the Del Monte parties"[75] and that the latter have executed amicable settlements which completely satisfied any claims against DEL MONTE. In accordance with the alleged compromise agreements with the four plaintiffs in Civil Case No. 5617, DEL MONTE sought the dismissal of the Amended Joint-Complaint in the said civil case. Furthermore, in view of the above settlement agreements with ABELLA, *et al.*, in Civil Case No. 24,251-96, DEL MONTE stated that it no longer wished to pursue its petition in G.R. No. 127856 and accordingly prayed that it be allowed to withdraw the same.

Having adjudged that Civil Case Nos. 5617 and 24,251-96 should be remanded to the RTC of General Santos City and the RTC of Davao City, respectively, the Court deems that the Consolidated Motions (to Drop Party-Respondents) filed by NAVIDA, *et al.*, and ABELLA, *et al.*, should likewise be referred to the said trial courts for appropriate disposition.

Under Article 2028 of the Civil Code, "[a] compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." Like any other contract, an extrajudicial compromise agreement is not excepted from rules and principles of a contract. It is a consensual contract, perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon

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[74] *Id.* at 3235-3272.

[75] The Release In Full bore the names of plaintiffs Leoncio Serdoncillo, Edgar M. Penaranda and Leonardo Burdeos, Jr. The Release in Full under the name of Bernabe Navida [*Rollo* (G.R. No. 125078), Vol. II, pp. 3390-3404] was attached to DEL MONTE's Supplement to Manifestation and Motion dated April 2, 2007.

the thing and the cause which are to constitute the contract.[76] Judicial approval is not required for its perfection.[77] A compromise has upon the parties the effect and authority of *res judicata*[78] and this holds true even if the agreement has not been judicially approved.[79] In addition, as a binding contract, a compromise agreement determines the rights and obligations of **only** the parties to it.[80]

In light of the foregoing legal precepts, the RTC of General Santos City and the RTC of Davao City should first receive in evidence and examine all of the alleged compromise settlements involved in the cases at bar to determine the propriety of dropping any party as a defendant therefrom.

The Court notes that the Consolidated Motions (to Drop Party-Respondents) that was filed by NAVIDA, *et al.*, and ABELLA, *et al.*, only pertained to DOW, OCCIDENTAL and SHELL in view of the latter companies' alleged compromise agreements with the plaintiff claimants. However, in subsequent developments, DEL MONTE and CHIQUITA supposedly reached their own amicable settlements with the plaintiff claimants, but DEL MONTE qualified that it entered into a settlement agreement with only four of the plaintiff claimants in Civil Case No. 5617. These four plaintiff claimants were allegedly the only ones who were asserting claims against DEL MONTE. However, the said allegation of DEL MONTE was simply stipulated in their Compromise Settlement, Indemnity, and Hold Harmless Agreement

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[76] *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*, 370 Phil. 150, 163 (1999).

[77] *Sanchez v. Court of Appeals*, 345 Phil. 155, 182 (1997).

[78] Article 2037 of the Civil Code reads:

Art. 2037. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

[79] *Santos Ventura Hocorma Foundation, Inc. v. Santos*, 484 Phil. 447, 455 (2004).

[80] *California Bus Lines, Inc. v. State Investment House, Inc.*, 463 Phil. 689, 710 (2003).

and its truth could not be verified with certainty based on the records elevated to this Court. Significantly, the 336 plaintiff claimants in Civil Case No. 5617 jointly filed a complaint without individually specifying their claims against DEL MONTE or any of the other defendant companies. Furthermore, not one plaintiff claimant filed a motion for the removal of either DEL MONTE or CHIQUITA as defendants in Civil Case Nos. 5617 and 24,251-96.

There is, thus, a primary need to establish who the specific parties to the alleged compromise agreements are, as well as their corresponding rights and obligations therein. For this purpose, the courts *a quo* may require the presentation of additional evidence from the parties. Thereafter, on the basis of the records of the cases at bar and the additional evidence submitted by the parties, if any, the trial courts can then determine who among the defendants may be dropped from the said cases.

It is true that, under Article 2194 of the Civil Code, the responsibility of two or more persons who are liable for the same quasi-delict is solidary. A solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors.[81]

In solidary obligations, the paying debtor's right of reimbursement is provided for under Article 1217 of the Civil Code, to wit:

> Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.
>
> He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.
>
> When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

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[81] *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 832 (2001).

The above right of reimbursement of a paying debtor, and the corresponding liability of the co-debtors to reimburse, will only arise, however, if a solidary debtor who is made to answer for an obligation actually delivers payment to the creditor. As succinctly held in *Lapanday Agricultural Development Corporation v. Court of Appeals*,[82] "[p]ayment, which means not only the delivery of money but also the performance, in any other manner, of the obligation, is the operative fact which will entitle either of the solidary debtors to seek reimbursement for the share which corresponds to each of the [other] debtors."[83]

In the cases at bar, there is no right of reimbursement to speak of as yet. A trial on the merits must necessarily be conducted first in order to establish whether or not defendant companies are liable for the claims for damages filed by the plaintiff claimants, which would necessarily give rise to an obligation to pay on the part of the defendants.

At the point in time where the proceedings below were prematurely halted, no cross-claims have been interposed by any defendant against another defendant. If and when such a cross-claim is made by a non-settling defendant against a settling defendant, it is within the discretion of the trial court to determine the propriety of allowing such a cross-claim and if the settling defendant must remain a party to the case purely in relation to the cross claim.

In *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*,[84] the Court had the occasion to state that "where there are, along with the parties to the compromise, other persons involved in the litigation who have not taken part in concluding the compromise agreement but are adversely affected or feel prejudiced thereby, should not be precluded from invoking in the same proceedings an adequate relief therefor."[85]

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[82] 381 Phil. 41 (2000).

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

[84] *Supra* note 76.

[85] *Id.* at 164.

Relevantly, in *Philippine International Surety Co., Inc. v. Gonzales*,[86] the Court upheld the ruling of the trial court that, in a joint and solidary obligation, the paying debtor may file a third-party complaint and/or a cross-claim to enforce his right to seek contribution from his co-debtors.

Hence, the right of the remaining defendant(s) to seek reimbursement in the above situation, if proper, is not affected by the compromise agreements allegedly entered into by NAVIDA, *et al.*, and ABELLA, *et al.*, with some of the defendant companies.

WHEREFORE, the Court hereby *GRANTS* the petitions for review on *certiorari* in G.R. Nos. 125078, 126654, and 128398. We *REVERSE* and *SET ASIDE* the Order dated May 20, 1996 of the Regional Trial Court of General Santos City, Branch 37, in Civil Case No. 5617, and the Order dated October 1, 1996 of the Regional Trial Court of Davao City, Branch 16, and its subsequent Order dated December 16, 1996 denying reconsideration in Civil Case No. 24,251-96, and *REMAND* the records of this case to the respective Regional Trial Courts of origin for further and appropriate proceedings in line with the ruling herein that said courts have jurisdiction over the subject matter of the amended complaints in Civil Case Nos. 5617 and 24,251-96.

The Court likewise *GRANTS* the motion filed by Del Monte to withdraw its petition in G.R. No. 127856. In view of the previous grant of the motion to withdraw the petition in G.R. No. 125598, both G.R. Nos. 127856 and 125598 are considered *CLOSED AND TERMINATED.*

No pronouncement as to costs.

SO ORDERED.

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

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[86] 113 Phil. 373, 376-377 (1961).

[*] Per Special Order No. 994 dated May 27, 2011.

THIRD DIVISION

[G.R. No. 156375. May 30, 2011]

DOLORES ADORA MACASLANG, *petitioner, vs.* **RENATO and MELBA ZAMORA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; AS AN APPELLATE COURT, THE RTC MAY RULE UPON ISSUES NOT RAISED ON APPEAL. — [T]he petitioner's appeal herein, being taken from the decision of the MTCC to the RTC, was governed by a different rule, specifically Section 18 of Rule 70 of the *Rules of Court* x x x As such, the RTC, in exercising appellate jurisdiction, was not limited to the errors assigned in the petitioner's appeal memorandum, but could decide on the basis of the entire record of the proceedings had in the trial court and such memoranda and/or briefs as *may be* submitted by the parties or *required* by the RTC.

2. ID.; APPEALS; APPELLATE COURT IS LIMITED TO THE REVIEW OF THE ASSIGNED ERRORS; EXCEPTIONS THERETO SHOULD HAVE BEEN APPLIED BY THE COURT OF APPEALS. — [E]ven without the differentiation in the procedures of deciding appeals, the limitation of the review to only the errors assigned and properly argued in the appeal brief or memorandum and the errors necessarily related to such assigned error ought not to have obstructed the CA from resolving the unassigned issues by virtue of their coming under one or several of the following recognized exceptions to the limitation, namely: (*a*) When the question affects jurisdiction over the subject matter; (*b*) Matters that are evidently plain or clerical errors within contemplation of law; (*c*) Matters whose consideration is necessary in arriving at a just decision and complete resolution of the case or in serving the interests of justice or avoiding dispensing piecemeal justice; (*d*) Matters raised in the trial court and are of record having some bearing on the issue submitted that the parties failed to raise or that the lower court ignored; (*e*) Matters closely related to an error assigned; and (*f*) Matters upon which the determination of a

question properly assigned is dependent. Consequently, the CA improperly disallowed the consideration and resolution of the two errors despite their being: (*a*) necessary in arriving at a just decision and a complete resolution of the case; and (*b*) matters of record having some bearing on the issues submitted that the lower court ignored.

3. ID.; ACTIONS; CAUSE OF ACTION; ALLEGATIONS THAT MUST BE PRESENT IN A COMPLAINT FOR UNLAWFUL DETAINER TO SUFFICIENTLY STATE A CAUSE OF ACTION; APPLICATION. — A complaint sufficiently alleges a cause of action for unlawful detainer if it states the following: (*a*) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (*b*) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession; (*c*) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and (*d*) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment. x x x Based on its allegations, the complaint sufficiently stated a cause of action for unlawful detainer. Firstly, it averred that the petitioner possessed the property by the mere tolerance of the respondents. Secondly, the respondents demanded that the petitioner vacate the property, thereby rendering her possession illegal. Thirdly, she remained in possession of the property despite the demand to vacate. And, fourthly, the respondents instituted the complaint on March 10, 1999, which was well within a year after the demand to vacate was made around September of 1998 or later.

4. ID.; ID.; ID.; TEST TO DETERMINE WHETHER A COMPLAINT STATES A CAUSE OF ACTION. — In resolving whether the complaint states a cause of action or not, only the facts alleged in the complaint are considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Only ultimate facts, not legal conclusions or evidentiary facts, are considered for purposes of applying the test.

5. ID.; ID.; ID.; FAILURE TO STATE A CAUSE OF ACTION AND LACK OF CAUSE OF ACTION, DISTINGUISHED. — Failure to state a cause of action and lack of cause of action are really different from each other. On the one hand, failure

to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the *Rules of Court*. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. Justice Regalado, a recognized commentator on remedial law, has explained the distinction: x x x What is contemplated, therefore, is a *failure to state* a cause of action which is provided in Sec. 1(g) of Rule 16. This is a matter of insufficiency of the *pleading*. Sec. 5 of Rule 10, which was also included as the last mode for raising the issue to the court, refers to the situation where the evidence *does not prove* a cause of action. This is, therefore, a matter of insufficiency of *evidence*. Failure to state a cause of action is different from failure to prove a cause of action. The remedy in the first is to move for dismissal of the pleading, while the remedy in the second is to demur to the evidence, hence reference to Sec. 5 of Rule 10 has been eliminated in this section. The procedure would consequently be to require the pleading to state a cause of action, by timely objection to its deficiency; or, at the trial, to file a demurrer to evidence, if such motion is warranted.

6. ID.; ID.; ID.; THREE ESSENTIAL ELEMENTS OF A CAUSE OF ACTION, EXPLAINED. — A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely: (*a*) The legal right of the plaintiff; (*b*) The correlative obligation of the defendant; and (*c*) The act or omission of the defendant in violation of said legal right. If the allegations of the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. Evidently, it is not the lack or absence of a cause of action that is a ground for the dismissal of the complaint but the fact that the complaint states no cause of action. Failure to state a cause of action may be raised at the earliest stages of an action through a motion to dismiss, but lack of cause of action may be raised at any time after the questions of fact have been resolved on the basis of the stipulations, admissions, or evidence presented.

7. CIVIL LAW; CONTRACTS; EQUITABLE MORTGAGE, CIRCUMSTANCES SHOWING BADGES OF. — Submissions of the petitioner further supported the findings of the RTC on

the equitable mortgage. Firstly, there was the earlier dated instrument (*deed of pacto de retro*) involving the same property, albeit the consideration was only ₱480,000.00, executed between the petitioner as vendor *a retro* and the respondent Renato Zamora as vendee *a retro*. Secondly, there were two receipts for the payments the petitioner had made to the respondents totaling ₱300,000.00. And, thirdly, the former secretary of respondent Melba Zamora executed an affidavit acknowledging that the petitioner had already paid a total of ₱500,000.00 to the respondents. All these confirmed the petitioner's claim that she remained the owner of the property and was still entitled to its possession.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; DEFENDANT'S FAILURE TO FILE AN ANSWER MIGHT RESULT TO A JUDGMENT BY DEFAULT, NOT TO A DECLARATION OF DEFAULT. — The first lapse was the MTCC's granting of the respondents' motion to declare the petitioner in default following her failure to file an answer. The proper procedure was not for the plaintiffs to move for the declaration in default of the defendant who failed to file the answer. Such a motion to declare in default has been expressly prohibited under Section 13, Rule 70 of the *Rules of Court*. Instead, the trial court, either *motu proprio* or on motion of the plaintiff, should render judgment as the facts alleged in the complaint might warrant. In other words, the defendant's failure to file an answer under Rule 70 of the *Rules of Court* might result to a judgment by default, not to a declaration of default.

9. ID.; ID.; ID.; RECEPTION OF ORAL TESTIMONY SHOULD NOT HAVE BEEN ALLOWED BY THE MTCC SINCE THE RULES ENVISIONED THE SUBMISSION ONLY OF AFFIDAVITS. — The second lapse was the MTCC's reception of the oral testimony of respondent Melba Zamora. Rule 70 of the *Rules of Court* has envisioned the submission only of affidavits of the witnesses (not oral testimony) and other proofs on the factual issues defined in the order issued within five days from the termination of the preliminary conference; and has permitted the trial court, should it find the need to clarify material facts, to thereafter issue an order during the 30-day period from submission of the affidavits and other proofs specifying the matters to be clarified, and requiring the parties

to submit affidavits or other evidence upon such matters within ten days from receipt of the order.

APPEARANCES OF COUNSEL

Lauro V. Francisco for petitioner.
Vicente Espina for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The Regional Trial Court (RTC) is not limited in its review of the decision of the Municipal Trial Court (MTC) to the issues assigned by the appellant, but can decide on the basis of the entire records of the proceedings of the trial court and such memoranda or briefs as may be submitted by the parties or required by the RTC.

The petitioner appeals the decision promulgated on July 3, 2002,[1] whereby the Court of Appeals (CA) reversed" for having no basis in fact and in law" the decision rendered on May 18, 2000[2] by the Regional Trial Court, Branch 25, in Danao City (RTC) that had dismissed the respondents' action for ejectment against the petitioner, and reinstated the decision dated September 13, 1999 of the Municipal Trial Court in Cities (MTCC) of DanaoCity (ordering the petitioner as defendant to vacate the premises and to pay attorney's fees of ₱10,000.00 and monthly rental of ₱5,000.00 starting December 1997 until they vacated the premises).[3]

We grant the petition for review and rule that contrary to the CA's conclusion, the RTC as an appellate court properly

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[1] *Rollo,* pp. 30-33; penned by Associate Justice Jose L. Sabio (retired), and concurred in by Associate Justice Hilarion L. Aquino (retired) and Associate Justice Perlita J. Tria Tirona (retired).

[2] *Id.,* pp. 47-51; penned by Judge Meinrado P. Paredes.

[3] *Id.,* pp. 43-46; penned by Judge Manuel D. Patalinghug.

considered and resolved issues even if not raised in the appeal from the decision rendered in an ejectment case by the MTCC.

ANTECEDENTS

On March 10, 1999, the respondents filed a complaint for unlawful detainer in the MTCC, alleging that "the [petitioner] sold to [respondents] a residential land located in Sabang, Danao City" and that "the [petitioner] requested to be allowed to live in the house" with a "promise to vacate as soon as she would be able to find a new residence." They further alleged that despite their demand after a year, the petitioner failed or refused to vacate the premises.

Despite the due service of the summons and copy of the complaint, the petitioner did not file her answer. The MTCC declared her in default upon the respondents' motion to declare her in default, and proceeded to receive the respondents'oral testimony and documentary evidence. Thereafter, on September 13, 1999, the MTCC rendered judgment against her, disposing:

> WHEREFORE, considering the foregoing, Judgment is hereby rendered in favor [of] plaintiffs (sic) spouses Renato Zamora and Melba Zamora and against defendant Dolores Adora Macaslang, ordering defendant to vacate the properties in question, to pay to plaintiffs Attorney's Fees in the sum of ₱10,000.00 and monthly rental of ₱5,000.00 starting December, 1997 until the time the defendant shall have vacated the properties in question.
>
> SO ORDERED.[4]

The petitioner appealed to the RTC, averring the following as reversible errors, namely:

1. Extrinsic Fraud was practiced upon defendant-appellant which ordinary prudence could not have guarded against and by reason of which she has been impaired of her rights.
2. Defendant-Appellant has a meritorious defense in that there was no actual sale considering that the absolute deed of sale relied upon by the plaintiff-appell[ees] is a patent-nullity

[4] *Id.,* p. 46.

> as her signature therein was procured through fraud and trickery.[5]

and praying through her appeal memorandum as follows:

> Wherefore, in view of the foregoing, it is most respectfully prayed for that judgment be rendered in favor of defendant-appellant ordering that this case be remanded back to the Court of Origin, Municipal Trial Court of Danao City, for further proceedings to allow the defendant to present her evidence, and thereafter, to render a judgment anew.[6]

On May 18, 2000, the RTC resolved the appeal, to wit:[7]

> WHEREFORE, judgment is hereby rendered dismissing the complaint for failure to state a cause of action.
>
> The same may, however, be refiled in the same Court, by alleging plaintiffs' cause of action, if any.
>
> Plaintiffs' Motion for Execution of Judgment of the lower court is rendered moot by this judgment.
>
> SO ORDERED.

The respondents appealed to the CA, assailing the RTC's decision for "disregarding the allegations in the complaint" in determining the existence or non-existence of a cause of action.

On July 3, 2002, the CA reversed and set aside the RTC's decision and reinstated the MTCC's decision in favor of the respondents, disposing:

> WHEREFORE, foregoing premises considered, the Petition is hereby GIVEN DUE COURSE. Resultantly, the impugned decision of the Regional Trial Court is hereby REVERSED and SET ASIDE for having no basis in fact and in law, and the Decision of the Municipal Trial Court in Cities REINSTATED and AFFIRMED. No costs.
>
> SO ORDERED.[8]

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[5] *Rollo*, p. 14.

[6] CA *Rollo*, p. 87.

[7] *Rollo*, pp. 47-51.

[8] *Supra*, note 1.

The petitioner'smotion for reconsideration was denied on November 19, 2002.

ISSUES

Hence, the petitioner appeals the CA's adverse decision, submitting legal issues, as follows:

1. Whether or not the Regional Trial Court in the exercise of its Appellate Jurisdiction is limited to the assigned errors in the Memorandum or brief filed before it or whether it can decide the case based on the entire records of the case, as provided for in Rule 40, Sec. 7. This is a novel issue which, we respectfully submit, deserves a definitive ruling by this Honorable Supreme Court since it involves the application of a new provision, specifically underlined now under the 1997 Revised Rules on Civil procedure.
2. Whether or not in an action for unlawful detainer, where there was no prior demand to vacate and comply with the conditions of the lease made, a valid cause of action exists?
3. Whether or not in reversing the Regional Trial Court Decision and reinstating and affirming the decision of the Municipal Circuit Trial Court, which was tried and decided by the MCTC in violation of the Rules on Summary Procedure, the Court of Appeals sanctioned a gross departure from the usual course of judicial proceedings?[9]

The issues that this Court has to resolve are stated thuswise:

1. Whether or not the CA correctly found that the RTC committed reversible error in ruling on issues not raised by the petitioner in her appeal;
2. Whether or not the CA correctly found that the complaint stated a valid cause of action;
3. Whether or not the CA erred in finding that there was a valid demand to vacate made by the respondents on the petitioner; and
4. Whether or not the petitioner's defense of ownership was meritorious.

[9] *Rollo,* pp. 11-26.

RULING

We grant the petition for review.

A.

As an appellate court, RTC may rule upon an issue not raised on appeal

In its decision, the CA ruled that the RTC could not resolve issues that were not assigned by the petitioner in her appeal memorandum, explaining:

> Indeed(,) We are rather perplexed why the Regional Trial Court, in arriving at its decision, discussed and ruled on issues or grounds which were never raised, assigned, or argued on by the Defendant-appellee in her appeal to the former. A careful reading of the Defendant-appellee's appeal memorandum clearly shows that it only raised two (2) grounds, namely (a) alleged extrinsic fraud, (b) meritorious defenses based on nullity of the Deed of Sale Instrument. And yet the Trial Court, in its decision, ruled on issues not raised such as lack of cause of action and no prior demand to vacate having been made.
>
> Only errors assigned and properly argued on the brief and those necessarily related thereto, may be considered by the appellate court in resolving an appeal in a civil case. Based on said clear jurisprudence, the court *a quo* committed grave abuse of discretion amounting to lack of jurisdiction when it resolved Defendant-appellee's appeal based on grounds or issues not raised before it, much less assigned by Defendant-appellee as an error.
>
> Not only that. It is settled that an issue which was not raised during the Trial in the court below would not be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play, justice and due process (*Victorias Milling Co., Inc. vs. CA*, 333 SCRA 663). We can therefore appreciate Plaintiffs-appellants' dismay caused by the Regional Trial Court's blatant disregard of a basic and fundamental right to due process.[10]

The petitioner disagrees with the CA and contends that the RTC as an appellate court could rule on the failure of the complaint

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[10] *Id.*, pp. 32-33.

to state a cause of action and the lack of demand to vacate even if not assigned in the appeal.

We concur with the petitioner's contention.

The CA might have been correct had the appeal been a *first* appeal from the RTC to the CA or another proper superior court, in which instance Section 8 of Rule 51, which applies to appeals from the RTC to the CA,imposesthe express limitation of the review to only those specified in the assignment of errors or closely related to or dependent on an assigned error and properly argued in the appellant's brief, *viz*:

> Section 8. *Questions that may be decided*. — **No error** which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceeding therein **will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief,** save as the court may pass upon plain errors and clerical errors.

But the petitioner's appeal herein,being taken from the decision of the MTCC to the RTC, was governed by a different rule, specifically Section 18 of Rule 70 of the *Rules of Court*, to wit:

> Section 18. x x x
>
> x x x x x x x x x
>
> **The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Court**. (7a)

As such,the RTC, in exercising appellate jurisdiction,was not limited to the errors assigned in the petitioner's appeal memorandum, but could decide on the basis of the entire record of the proceedings had in the trial court and such memoranda and/or briefs as *may be* submitted by the parties or *required* by the RTC.

The difference between the procedures for deciding on review is traceable to Section 22 of *Batas Pambansa Blg. 129*,[11] which provides:

Section 22. *Appellate Jurisdiction*. — Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions. **Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin [and] such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts.** The decision of the Regional Trial Courts in such cases shall be appealable by petition for review to the Court of Appeals which may give it due course only when the petition shows *prima facie* that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed.[12]

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[11] Also known as *The Judiciary Reorganization Act of 1980*, which became effective upon its approval on August 14, 1981 by virtue of its Section 48 providing that: "This Act shall take effect immediately."

[12] Interestingly, Section 45 of Republic Act No. 296 (*Judiciary Act of 1948*), as amended by Section 1 of Republic Act No. 6031 (*An Act to Increase the Salaries of Municipal Judges and to Require Them to Devote Full Time to their Functions as Judges, to convert Municipal and City Courts into Courts of Record, to make final the Decisions of Courts of First Instance in Appealed Cases falling under the Exclusive Original Jurisdiction of Municipal and City Courts except in questions of law, amending thereby Sections 45, 70, 75, 77 and 82 of Republic Act Numbered Two Hundred And Ninety Six, Otherwise known as the Judiciary Act of 1948, and for other purposes*), which governed the appellate procedure in the Court of First Instance, had an almost similar tenor, to wit:

> Section 45.*Appellate Jurisdiction*. — Courts of First Instance shall have appellate jurisdiction over all cases arising in city and municipal courts, in their respective provinces, except over appeals from cases tried by municipal judges of provincial capitals or city judges pursuant to the authority granted under the last paragraph of Section 87 of this Act.
>
> **Courts of First Instance shall decide such appealed cases on the basis of the evidence and records transmitted from the city or municipal courts: *Provided*, That the parties may submit memoranda and/or brief with oral argument if so requested: *Provided, however*, That if the case was tried in a city or municipal court before the latter became a court of record, then on appeal the case shall proceed by trial *de novo*.**

As its compliance with the requirement of Section 36 of *Batas Pambansa Blg. 129* to "adopt special rules or procedures applicable to such cases in order to achieve an expeditious and inexpensive determination thereof without regard to technical rules," the Court promulgated the *1991 Revised Rules on Summary Procedure*, whereby it institutionalized the summary procedure for all the first level courts. Section 21 of the *1991 Revised Rules on Summary Procedure* specifically stated:

Section 21. *Appeal*. — **The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same in accordance with Section 22 of Batas Pambansa Blg. 129**. The decision of the Regional Trial Court in civil cases governed by this Rule, including forcible entry and unlawful detainer shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. Section 10 of Rule 70 shall be deemed repealed.

Later on, the Court promulgated the 1997 *Rules of Civil Procedure*, effective on July 1, 1997, and incorporated in Section 7 of Rule 40 thereof the directive to the RTC to decide appealed cases "on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed," *viz*:

Section 7. *Procedure in the Regional Trial Court*. —

(*a*) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

In cases falling under the exclusive original jurisdiction of municipal and city courts which are appealed to the courts of first instance, the decision of the latter shall be final: *Provided*, That the findings of facts contained in said decision are supported by substantial evidence as basis thereof, and the conclusions are not clearly against the law and jurisprudence; in cases falling under the concurrent jurisdictions of the municipal and city courts with the courts of first instance, the appeal shall be made directly to the court of appeals whose decision shall be final: *Provided, however*, that the supreme court in its discretion may, in any case involving a question of law, upon petition of the party aggrieved by the decision and under rules and conditions that it may prescribe, require by *certiorari* that the case be certified to it for review and determination, as if the case had been brought before it on appeal.

(*b*) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.

(*c*) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. **The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed**. (n)

As a result, the RTC presently decides *all* appeals from the MTC based on the entire record of the proceedings had in the court of origin and such memoranda or briefs as are filed in the RTC.

Yet, even without the differentiation in the procedures of deciding appeals, the limitation of the review to only the errors assigned and properly argued in the appeal brief or memorandum and the errors necessarily related to such assigned error sought not to have obstructed the CA from resolving the unassigned issues by virtue of their coming under one or several of the following recognized exceptions to the limitation, namely:

(*a*) When the question affects jurisdiction over the subject matter;

(*b*) Matters that are evidently plain or clerical errors within contemplation of law;

(*c*) Matters whose consideration is necessary in arriving at a just decision and complete resolution of the case or in serving the interests of justice or avoiding dispensing piecemeal justice;

(*d*) Matters raised in the trial court and are of record having some bearing on the issue submitted that the parties failed to raise or that the lower court ignored;

(*e*) Matters closely related to an error assigned; and

(*f*) Matters upon which the determination of a question properly assigned is dependent.[13]

Consequently, the CA improperly disallowed the consideration and resolution of the two errors despite their being: (*a*) necessary in arriving at a just decision and a complete resolution of the case; and (*b*) matters of record having some bearing on the issues submitted that the lower court ignored.

B.
CA correctly delved into and determined whether or not complaint stated a cause of action

The RTC opined that the complaint failed to state a cause of action because the evidence showed that there was no demand to vacate made upon the petitioner.

The CA disagreed, observing in its appealed decision:

> But what is worse is that a careful reading of Plaintiffs-appellants' Complaint would readily reveal that they have sufficiently established (*sic*) a cause of action against Defendant-appellee. It is undisputed that as alleged in the complaint and testified to by Plaintiffs-appellants, a demand to vacate was made before the action for unlawful detainer was instituted.
>
> A complaint for unlawful detainer is sufficient if it alleges that the withholding of possession or the refusal is unlawful without necessarily employing the terminology of the law (*Jimenez vs. Patricia, Inc*., 340 SCRA 525). In the case at bench, par. 4 of the Complaint alleges, thus:
>
> "4. After a period of one (1) year living in the aforementioned house, Plaintiff demanded upon defendant to vacate but she failed and refused";
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> From the foregoing allegation, it cannot be disputed that a demand to vacate has not only been made but that the same was alleged in the complaint. How the Regional Trial Court came to the questionable

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[13] *Comilang v. Burcena*, G.R. No. 146853, February 13, 2006, 482 SCRA 342, 349; *Sumipat v. Banga*, G.R. No. 155810, August 13, 2004, 436 SCRA 521, 532-533; *Catholic Bishop of Balanga v. Court of Appeals*, G.R. No. 112519, November 14, 1996, 264 SCRA 181, 191-192.

conclusion that Plaintiffs-appellants had no cause of action is beyond Us.[14]

We concur with the CA.

A complaint sufficiently alleges a cause of action for unlawful detainer if it states the following:

(*a*) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

(*b*) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession;

(*c*) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and

(*d*) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.[15]

In resolving whether the complaint states a cause of action or not, only the facts alleged in the complaint are considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for.[16] Only ultimate facts, not legal conclusions or evidentiary facts, are considered for purposes of applying the test.[17]

To resolve the issue, therefore, a look at the respondents' complaint is helpful:

2. On September 10, 1997, **defendant sold to plaintiffs a residential land** located in Sabang, Danao City, covered by Tax Dec.0312417 RB with an area of 400 square meters, including a

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[14] *Id.*, pp. 32-33.

[15] *Cabrera v. Getaruela*, G.R. No. 164213, April 21, 2009, 586 SCRA 129, 136-137.

[16] *Peltan Development, Inc. v. CA*, G.R. No. 117029, March 19, 1997, 270 SCRA 82, 91.

[17] *G & S Transport Corp. v. CA*, G.R. No. 120287, May 28, 2002, 382 SCRA 262, 274.

residential house where defendant was then living covered by Tax Dec. 0312417 RB, a copy of the deed of absolute [sale] of these properties is hereto attached as Annex "A";

3. After the sale, **defendant requested to be allowed to live in the house** which **plaintiff granted** on reliance of defendant's **promise to vacate** as soon as she would be able to find a new residence;

4. After a period of one (1) year living in the aforementioned house, **plaintiffs demanded upon defendant to vacate** but **she failed or refused**.

5. Plaintiffs sought the aid of the barangay Lupon of Sabang, Danao City for arbitration but no settlement was reached as shown by a certification to file action hereto attached as Annex "B";

6. Plaintiffs were compelled to file this action and hire counsel for ₱10,000 by way of attorney's fee;

7. Defendant agreed to pay plaintiffs a monthly rental of ₱5,000 for the period of time that the former continued to live in the said house in question.

WHEREFORE, it is respectfully prayed of this Honorable Court to render judgment ordering the defendant to vacate the properties in question, ordering the defendant to pay plaintiffs attorney's fees in the sum of ₱10,000, ordering the defendant to pay the plaintiffs a monthly rental of ₱5,000 starting in October 1997, until the time that defendant vacates the properties in question. Plaintiffs pray for such other refiefs consistent with justice and equity.[18]

Based on its allegations, the complaintsufficiently stated a cause of action for unlawful detainer. Firstly, it averred that the petitioner possessed the property by the mere tolerance of the respondents. Secondly, the respondents demanded that the petitioner vacate the property, thereby rendering her possession illegal. Thirdly, she remained in possession of the property despite the demand to vacate. And, fourthly, the respondents instituted the complaint on March 10, 1999,which was well within a year after the demand to vacate was made around September of 1998 or later.

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[18] *Rollo*, p. 37.

Yet, even as we rule that the respondents' complaint stated a cause of action, we must find and hold that both the RTC and the CA erroneously appreciatedthe real issue to be about the complaint's failure to state a cause of action. It certainly was not so, butthe respondents' lack of cause of action. Their erroneous appreciation expectedly prevented the correct resolution of the action.

Failure to state a cause of action and lack of cause of action are really different from each other.On the one hand, failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the *Rules of Court*. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. Justice Regalado, a recognized commentator on remedial law, has explained the distinction:[19]

> x x x What is contemplated, therefore, is a *failure to state* a cause of action which is provided in Sec. 1(g) of Rule 16. This is a matter of insufficiency of the *pleading*. Sec. 5 of Rule 10, which was also included as the last mode for raising the issue to the court, refers to the situation where the evidence *does not prove* a cause of action. This is, therefore, a matter of insufficiency of *evidence*. Failure to state a cause of action is different from failure to prove a cause of action. The remedy in the first is to move for dismissal of the pleading, while the remedy in the second is to demur to the evidence, hence reference to Sec. 5 of Rule 10 has been eliminated in this section. The procedure would consequently be to require the pleading to state a cause of action, by timely objection to its deficiency; or, at the trial, to file a demurrer to evidence, if such motion is warranted.

A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:

(*a*) The legal right of the plaintiff;

(*b*) The correlative obligation of the defendant; and

(*c*) The act or omission of the defendant in violation of said legal right.

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[19] Regalado, *Remedial Law Compendium*, Volume I, Ninth Revised Ed. (2005), p. 182.

If the allegations of the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. Evidently, it is not the lack or absence of a cause of action that is a ground for the dismissal of the complaint but the fact that the complaint states no cause of action. Failure to state a cause of action may be raised at the earliest stages of an action through a motion to dismiss, but lack of cause of action may be raised at any time after the questions of fact have been resolved on the basis of the stipulations, admissions, or evidence presented.[20]

Having found that neither Exhibit C nor Exhibit E was a proper demand to vacate,[21] considering that Exhibit C (the respondents' letter dated February 11, 1998) demanded the payment of ₱1,101,089.90, and Exhibit E (their letter dated January 21, 1999) demanded the payment of ₱1,600,000.00, the RTC concluded that the demand alleged in the complaint did not constitute a demand to pay rent and to vacate the premises necessary in an action for unlawful detainer. It was this conclusion that caused the RTC to confuse the defect as failure of the complaint to state a cause of action for unlawful detainer.

The RTC erred even in that regard.

To begin with, it was undeniable that Exhibit D (the respondents' letter dated April 28, 1998) constituted the demand to vacate that validly supported their action for unlawful detainer, because of its unmistakable tenor as a demand to vacate, which the following portion indicates:[22]

> This is to give notice that since the mortgage to your property has long expired and that since the property is already in my name, **I will be taking over the occupancy of said property two (2) months from date of this letter**.

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[20] *Bank of America NT&SA v. Court of Appeals*, G.R. No. 120135, March 31, 2003, 400 SCRA 156, 167-168; *Dabuco v. Court of Appeals*, G.R. No. 133775, January 20, 2000, 322 SCRA 853, 857-858.

[21] *Id.*, pp. 48-51.

[22] *Id.*, p. 42.

Exhibit D, despite not explicitly using the word *vacate*, relayed to the petitioner the respondents' desire to take over the possession of the property by giving her no alternative except to vacate. The word *vacate*, according to *Golden Gate Realty Corporation v. Intermediate Appellate Court*,[23] is not a talismanic word that must be employed in all notices to vacate. The tenants in *Golden Gate Realty Corporation* had defaulted in the payment of rents, leading their lessor to notify them to pay with a warning that a case of ejectment would be filed against them should they not do so. The Court held that the lessor had thereby given strong notice that "you either pay your unpaid rentals or I will file a court case to have you thrown out of my property," for there was no other interpretation of the import of the notice due to the alternatives being clear cut, in that the tenants must pay rentals that had been fixed and had become payable in the past, failing in which they must move out.[24]

Also, the demand not being to pay rent and to vacate did not render the cause of action deficient. Based on the complaint, the petitioner's possession was allegedly based on the respondents' tolerance, not on any contract between them. Hence, the demand to vacate sufficed.

C.
Ejectment was not proper due to defense of ownership being established

The respondents' cause of action for unlawful detainer was based on their supposed right to possession resulting from their having acquired it through sale.

The RTCdismissed the complaint based on its following findings, to wit:

> In the case at bench, there is conflict between the allegation of the complaint and the document attached thereto.
>
> Simply stated, plaintiff alleged that she bought the house of the defendant for ₱100,000.00 on September 10, 1997 as stated in an

[23] No. L-4289, July 31, 1987, 152 SCRA 684, 691.

[24] *Id.*

alleged Deed of Absolute Sale marked as Exhibit "A" to the complaint. Insofar as plaintiff is concerned, the best evidence is the said Deed of Absolute Sale.

The Court is surprised why in plaintiff's letter dated February 11, 1998, marked as Exhibit "C" and attached to the same complaint, she demanded from the defendant the whooping sum of ₱1,101,089.90. It must be remembered that this letter was written five (5) months after the deed of absolute sale was executed.

The same letter (Exhibit "C") is not a letter of demand as contemplated by law and jurisprudence. The plaintiff simply said that she will appreciate payment per notarized document. There is no explanation what this document is.

Plaintiff's letter dated April 28, 1998 (Exhibit "D") contradicts her allegation that she purchased the house and lot mentioned in the complaint. Exhibit "D", which is part of the pleading and a judicial admission clearly shows that the house and lot of the defendant was not sold but mortgaged.

Again, for purposes of emphasis and clarity, a portion of the letter (Exhibit "D") reads:

> 'This is to give notice that since the mortgage to your property has long expired and that since the property is already in my name, I will be taking over the occupancy of said property two (2) months from date of this letter.'
>
> x x x x x x x x x

Exhibit "E", which is a letter dated January 21, 1999, shows the real transaction between the parties in their case. To reiterate, the consideration in the deed of sale (Exhibit "A") is ₱100,000.00 but in their letter (Exhibit "E") she is already demanding the sum of ₱1,600,000.00 because somebody was going to buy it for ₱2,000,000.00.

There are indications that point out that the real transaction between the parties is one of equitable mortgage and not sale.[25]

Despite holding herein that the respondents' demand to vacate sufficed, we uphold the result of the RTC decision in favor of the petitioner. This we do, because the respondents' Exhibit C and Exhibit E, by demanding payment from the petitioner,

[25] *Rollo*, pp. 48-51.

respectively, of ₱1,101,089.90 and ₱1,600,000.00, revealed the true nature of the transaction involving the property in question as one of equitable mortgage, not a sale.

Our upholding of the result reached by the RTC rests on the following circumstances that tended to show that the petitioner had not really sold the property to the respondents, contrary to the latter's averments, namely:

(*a*) The petitioner, as the vendor, was paid the amount of only ₱100,000.00,[26] a price too inadequate in comparison with the sum of ₱1,600,000.00 demanded in Exhibit E;[27]

(*b*) The petitioner retained possession of the property despite the supposed sale; and

(*c*) The *deed of sale* was executed as a result or by reason of the loan the respondents extended to the petitioner, because they still allowed the petitioner to "*redeem*" the property by paying her obligation under the loan.[28]

Submissions of the petitioner further supported the findings of the RTC on the equitable mortgage. Firstly, there was the earlier dated instrument (*deed of pacto de retro*) involving the same property, albeit the consideration was only ₱480,000.00, executed between the petitioner as vendor *a retro* and the respondent Renato Zamora as vendee *a retro*.[29] Secondly, there were two receipts for the payments the petitioner had made to the respondents totaling ₱300,000.00.[30] And, thirdly, the former secretary of respondent Melba Zamora executed an affidavit acknowledging that the petitioner had already paid a total of ₱500,000.00 to the respondents.[31] All these confirmed the petitioner's claim that she remained the owner of the property and was still entitled to its possession.

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[26] *Id.,* p. 39.

[27] *Id.,* p. 49.

[28] *Id.,* p. 42.

[29] CA *Rollo,* pp. 89-90.

[30] *Id.,* p. 91.

[31] *Id.,* p. 92.

Article 1602 of the *Civil Code* enumerates the instances when a contract, regardless of its nomenclature, may be presumed to be an equitable mortgage, namely:

(*a*) When the price of a sale with right to repurchase is unusually inadequate;

(*b*) When the vendor remains in possession as lessee or otherwise;

(*c*) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(*d*) When the purchaser retains for himself a part of the purchase price;

(*e*) When the vendor binds himself to pay the taxes on the thing sold; and,

(*f*) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

The circumstances earlier mentioned were, indeed, badges of an equitable mortgage within the context ofArticle 1602 of the *Civil Code*.

Nonetheless, the findings favorable to the petitioner's ownership are neither finally determinative of the title in the property, nor conclusive in any other proceeding where ownership of the property involved herein may be more fittingly adjudicated. Verily, where the cause of action in an ejectment suit is based on ownership of the property, the defense that the defendant retained title or ownership is a proper subject for determination by the MTC but only for the purpose of adjudicating the rightful possessor of the property.[32] This is based on Rule 70 of the *Rules of Court, viz*:

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[32] *Sps. Refugia v. Court of Appeals*, G.R. No. 118284, July 5, 1996, 258 SCRA 347, 362-367.

Section 16. *Resolving defense of ownership*. — When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. (4a)

D.
MTC committed procedural lapses that must be noted and corrected

The Court seizes the opportunity to note and to correct several noticeable procedural lapses on the part of the MTCC, to avoid the impression that the Court condones or tolerates the lapses.

The first lapse was the MTCC's granting of the respondents' motion to declare the petitioner in default following her failure to file an answer. The proper procedure was not for the plaintiffs to move for the declaration in default of the defendant who failed to file the answer. Such a motion to declare in default has been expressly prohibited under Section 13, Rule 70 of the *Rules of Court*.[33] Instead, the trial court, either *motu proprio* or on motion of the plaintiff, should render judgment as the facts alleged in the complaint might warrant.[34] In other words,

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[33] Section 13.*Prohibited pleadings and motions*. — The following petitions, motions, or pleadings shall not be allowed:

1. Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, or failure to comply with Section 12;
2. Motion for a bill of particulars;
3. Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
4. Petition for relief from judgment;
5. Motion for extension of time to file pleadings, affidavits or any other paper;
6. Memoranda;
7. Petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the court;
8. **Motion to declare the defendant in default;**
9. Dilatory motions for postponement;
10. Reply;
11. Third-party complaints;
12. Interventions. (19a, RSP)

[34] Section 7, Rule 70, *Rules of Court*, *viz*:

the defendant's failure to file an answer under Rule 70 of the *Rules of Court* might result to a judgment by default, not to a declaration of default.

The second lapse was the MTCC's reception of the oral testimony of respondent Melba Zamora. Rule 70 of the *Rules of Court* has envisioned the submission only of affidavits of the witnesses (not oral testimony) and other proofs on the factual issues defined in the order issued within five days from the termination of the preliminary conference;[35] and has permitted the trial court, should it find the need to clarify material facts, to thereafter issue an order during the 30-day period from submission of the affidavits and other proofs specifying the matters to be clarified, and requiring the parties to submit affidavits or other evidence upon such matters within ten days from receipt of the order.[36]

The procedural lapses committed in this case are beyond comprehension.The MTCC judge could not have been unfamiliar with the prevailing procedure, considering that the revised version of Rule 70, although taking effect only on July 1, 1997,was derived from the *1991 Revised Rule on Summary Procedure*, in effect since November 15, 1991. It was not likely, therefore, that the MTCC judge committed the lapses out of his unfamiliarity with the relevant rule. We discern that the cause of the lapses was his lack of enthusiasm in implementing correct procedures in this case. If that was the true reason, the Court can only be alarmed and concerned, for a judge should not lack enthusiasm in applying the rules of procedure lest the worthy objectives of

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Section 7. *Effect of failure to answer*. — Should the defendant fail to answer the complaint within the period above provided, the court, *motu proprio*, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein: Provided, however, That the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable, without prejudice to the applicability of Section 3(c), Rule 9, if there are two or more defendants.

[35] Section 10, Rule 70, *Rules of Court*.

[36] Section 11, Rule 70, *Rules of Court*.

their promulgation be unwarrantedly sacrificed and brushed aside. The MTCC judge should not forget that the rules of procedure were always meant to be implemented deliberately, not casually, and their non-compliance should only be excused in the higher interest of the administration of justice.

It is timely, therefore, to remind all MTC judges to display full and enthusiastic compliance with all the rules of procedure, especially those intended for expediting proceedings.

WHEREFORE, we grant the petition for review on *certiorari*; set aside the decision promulgated on July 3, 2002 by the Court of Appeals; and dismiss the complaint for unlawful detainer for lack of a cause of action.

The respondents shall pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 157549. May 30, 2011]

DONNINA C. HALLEY, *petitioner, vs.* **PRINTWELL, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; MERE SIMILARITY IN LANGUAGE OR THOUGHT BETWEEN THE COURT'S DECISION AND THE PARTY'S MEMORANDUM DID NOT JUSTIFY THE CONCLUSION THAT THE COURT SIMPLY COPIED FROM THE MEMORANDUM. — The contention of the petitioner, that the RTC merely copied the

memorandum of Printwell in writing its decision, and did not analyze the records on its own, thereby manifesting a bias in favor of Printwell, is unfounded. It is noted that the petition for review merely generally alleges that starting from its page 5, the decision of the RTC "copied verbatim the allegations of herein Respondents in its Memorandum before the said court," as if "the Memorandum was the draft of the Decision of the Regional Trial Court of Pasig," but fails to specify either the portions allegedly lifted verbatim from the memorandum, or why she regards the decision as copied. The omission renders the petition for review insufficient to support her contention, considering that the mere similarity in language or thought between Printwell's memorandum and the trial court's decision did not necessarily justify the conclusion that the RTC simply lifted verbatim or copied from the memorandum. It is to be observed in this connection that a trial or appellate judge may occasionally view a party's memorandum or brief as worthy of due consideration either entirely or partly. When he does so, the judge may adopt and incorporate in his adjudication the memorandum or the parts of it he deems suitable, and yet not be guilty of the accusation of lifting or copying from the memorandum. This is because of the avowed objective of the memorandum to contribute in the proper illumination and correct determination of the controversy. Nor is there anything untoward in the congruence of ideas and views about the legal issues between himself and the party drafting the memorandum. The frequency of similarities in argumentation, phraseology, expression, and citation of authorities between the decisions of the courts and the memoranda of the parties, which may be great or small, can be fairly attributable to the adherence by our courts of law and the legal profession to widely known or universally accepted precedents set in earlier judicial actions with identical factual milieus or posing related judicial dilemmas.

2. ID.; ID.; REQUIREMENTS AS TO THE CONTENT AND MANNER OF WRITING A DECISION, COMPLIED WITH IN CASE AT BAR. — Our own reading of the trial court's decision persuasively shows that the RTC did comply with the requirements regarding the content and the manner of writing a decision prescribed in the Constitution and the *Rules of Court*. The decision of the RTC contained clear and distinct findings of facts, and stated the applicable law and jurisprudence, fully explaining why the defendants were being held liable to the

plaintiff. In short, the reader was at once informed of the factual and legal reasons for the ultimate result.

3. COMMERCIAL LAW; CORPORATIONS; CORPORATE PERSONALITY CANNOT BE USED TO FOSTER INJUSTICE. — Although a corporation has a personality separate and distinct from those of its stockholders, directors, or officers, such separate and distinct personality is merely a fiction created by law for the sake of convenience and to promote the ends of justice. The corporate personality may be disregarded, and the individuals composing the corporation will be treated as individuals, if the corporate entity is being used as a cloak or cover for fraud or illegality; as a justification for a wrong; as an alter ego, an adjunct, or a business conduit for the sole benefit of the stockholders. As a general rule, a corporation is looked upon as a legal entity, unless and until sufficient reason to the contrary appears. Thus, the courts always presume good faith, and for that reason accord prime importance to the separate personality of the corporation, disregarding the corporate personality only after the wrongdoing is first clearly and convincingly established. It thus behooves the courts to be careful in assessing the milieu where the piercing of the corporate veil shall be done. Although nowhere in Printwell's amended complaint or in the testimonies Printwell offered can it be read or inferred from that the petitioner was instrumental in persuading BMPI to renege on its obligation to pay; or that she induced Printwell to extend the credit accommodation by misrepresenting the solvency of BMPI to Printwell, her personal liability, together with that of her co-defendants, remained because the CA found her and the other defendant stockholders to be in charge of the operations of BMPI at the time the unpaid obligation was transacted and incurred[.]

4. ID.; ID.; "TRUST FUND DOCTRINE"; CONCEPT AND SCOPE. — The *trust fund doctrine* enunciates a — x x x rule that the property of a corporation is a trust fund for the payment of creditors, but such property can be called a trust fund 'only by way of analogy or metaphor.' As between the corporation itself and its creditors it is a simple debtor, and as between its creditors and stockholders its assets are in equity a fund for the payment of its debts. x x x We clarify that the *trust fund doctrine* is not limited to reaching the stockholder's unpaid subscriptions. The scope of the doctrine when the corporation

is insolvent encompasses not only the capital stock, but also other property and assets generally regarded in equity as a trust fund for the payment of corporate debts. All assets and property belonging to the corporation held in trust for the benefit of creditors that were distributed or in the possession of the stockholders, regardless of full payment of their subscriptions, may be reached by the creditor in satisfaction of its claim. Also, under the *trust fund doctrine,* a corporation has no legal capacity to release an original subscriber to its capital stock from the obligation of paying for his shares, in whole or in part, without a valuable consideration, or fraudulently, to the prejudice of creditors. The creditor is allowed to maintain an action upon any unpaid subscriptions and thereby steps into the shoes of the corporation for the satisfaction of its debt. To make out a *prima facie* case in a suit against stockholders of an insolvent corporation to compel them to contribute to the payment of its debts by making good unpaid balances upon their subscriptions, it is only necessary to establish that the stockholders have not in good faith paid the par value of the stocks of the corporation.

5. ID.; ID.; ID.; STOCKHOLDERS MUST PROVE FULL PAYMENT OF THEIR SUBSCRIPTIONS; SUBMISSION OF A RECEIPT INDICATING THAT PAYMENT WAS MADE IN CHECK DOES NOT NECESSARILY ESTABLISH FULL PAYMENT OF STOCKHOLDER'S SUBSCRIPTION. — The petitioner's OR No. 227, presented to prove the payment of the balance of her subscription, indicated that her supposed payment had been made by means of a check. Thus, to discharge the burden to prove payment of her subscription, she had to adduce evidence satisfactorily proving that her payment by check was regarded as payment under the law. Payment is defined as the delivery of money. Yet, because a check is not money and only substitutes for money, the delivery of a check does not operate as payment and does not discharge the obligation under a judgment. The delivery of a bill of exchange only produces the fact of payment when the bill has been encashed. x x x Ostensibly, therefore, the petitioner's mere submission of the receipt issued in exchange of the check did not satisfactorily establish her allegation of full payment of her subscription. Indeed, she could not even inform the trial court about the identity of her drawee bank, and about

whether the check was cleared and its amount paid to BMPI. In fact, she did not present the check itself.

6. ID.; ID.; ID.; ID.; BOOKS AND RECORDS OF A CORPORATION AND CERTIFICATE OF STOCK MIGHT HAVE BEEN RELIABLE EVIDENCE OF FULL PAYMENT OF SUBSCRIPTIONS IF PRESENTED. — It is notable, too, that the petitioner and her co-stockholders did not support their allegation of complete payment of their respective subscriptions with the stock and transfer book of BMPI. Indeed, books and records of a corporation (including the stock and transfer book) are admissible in evidence in favor of or against the corporation and its members to prove the corporate acts, its financial status and other matters (like the status of the stockholders), and are ordinarily the best evidence of corporate acts and proceedings. Specifically, a stock and transfer book is necessary as a measure of precaution, expediency, and convenience because it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters. That she tendered no explanation why the stock and transfer book was not presented warrants the inference that the book did not reflect the actual payment of her subscription. Nor did the petitioner present any certificate of stock issued by BMPI to her. Such a certificate covering her subscription might have been a reliable evidence of full payment of the subscriptions, considering that under Section 65 of the *Corporation Code* a certificate of stock issues only to a subscriber who has fully paid his subscription. The lack of any explanation for the absence of a stock certificate in her favor likewise warrants an unfavorable inference on the issue of payment.

7. ID.; ID.; ID.; STOCKHOLDERS ARE LIABLE FOR CORPORATE DEBTS UP TO THE EXTENT OF THEIR UNPAID SUBSCRIPTION; INTEREST IS IMPOSABLE ON THE UNPAID SUBSCRIPTION. — The RTC declared the stockholders *pro rata* liable for the debt(based on the proportion to their shares in the capital stock of BMPI); and held the petitioner personally liable only in the amount of ₱149,955.65. We do not agree. The RTC lacked the legal and factual support for its prorating the liability. Hence, we need to modify the extent of the petitioner's personal liability to

Printwell. The prevailing rule is that a stockholder is personally liable for the financial obligations of the corporation *to the extent of his unpaid subscription*. In view of the petitioner's unpaid subscription being worth ₱262,500.00, she was liable up to that amount. Interest is also imposable on the unpaid obligation. Absent any stipulation, interest is fixed at 12% *per annum* from the date the amended complaint was filed on February 8, 1990 until the obligation (*i.e.*, to the extent of the petitioner's personal liability of ₱262,500.00) is fully paid.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Perpetuo Paner for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Stockholders of a corporation are liable for the debts of the corporation up to the extent of their unpaid subscriptions. They cannot invoke the veil of corporate identity as a shield from liability, because the veil may be lifted to avoid defrauding corporate creditors.

We affirm with modification the decision promulgated on August 14, 2002,[1] whereby the Court of Appeals (CA) upheld the decision of the Regional Trial Court, Branch 71, in Pasig City (RTC),[2] ordering the defendants (including the petitioner) to pay to Printwell, Inc. (Printwell) the principal sum of ₱291,342.76 plus interest.

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[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Salvador J. Valdez, Jr. and Amelita G. Tolentino concurring, *rollo*, pp. 36-49.

[2] Entitled *Printwell, Inc. v. Business Media Phils., Inc., Donnina C. Halley and Simon Halley, Roberto V. Cabrera, Jr., Albert T. Yu, Zenaida V. Yu, and Rizalino C. Vineza, rollo*, pp. 222-230.

Antecedents

The petitioner was an incorporator and original director of Business Media Philippines, Inc. (BMPI), which, at its incorporation on November 12, 1987,[3] had an authorized capital stock of ₱3,000,000.00 divided into 300,000 shares each with a par value of ₱10.00,of which 75,000 were initially subscribed, to wit:

Subscriber	No. of shares	Total subscription	Amount paid
Donnina C. Halley	35,000	₱ 350,000.00	₱87,500.00
Roberto V. Cabrera, Jr	18,000	₱ 180,000.00	₱45,000.00
Albert T. Yu	18,000	₱ 180,000.00	₱45,000.00
Zenaida V. Yu	2,000	₱ 20,000.00	₱5,000.00
Rizalino C. Vineza	2,000	₱ 20,000.00	₱5,000.00
TOTAL	75,000	₱ 750,000.00	₱187,500.00

Printwell engaged in commercial and industrial printing. BMPI commissioned Printwell for the printing of the magazine *Philippines, Inc*. (together with wrappers and subscription cards) that BMPI published and sold. For that purpose, Printwell extended 30-day credit accommodations to BMPI.

In the period from October 11, 1988 until July 12, 1989, BMPI placed with Printwell several orders on credit, evidenced by invoices and delivery receipts totaling ₱316,342.76. Considering that BMPI paid only ₱25,000.00, Printwell sued BMPI on January 26, 1990 for the collection of the unpaid balance of ₱291,342.76 in the RTC.[4]

On February 8, 1990, Printwell amended the complaint in order to implead as defendants all the original stockholders and incorporators to recover on their unpaid subscriptions, as follows:[5]

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[3] *Id.*, p. 109.

[4] Records, pp. 6-7.

[5] *Id.*, pp. 12-16.

Name	Unpaid Shares
Donnina C. Halley	₱262,500,00
Roberto V. Cabrera, Jr.	₱135,000.00
Albert T. Yu	₱135,000.00
Zenaida V. Yu	₱ 15,000.00
Rizalino C. Viñeza	₱ 15,000.00
TOTAL	₱562,500.00

The defendants filed a consolidated answer,[6] averring that they all had paid their subscriptions in full; that BMPI had a separate personality from those of its stockholders; that Rizalino C. Viñeza had assigned his fully-paid up shares to a certain Gerardo R. Jacinto in 1989; and that the directors and stockholders of BMPI had resolved to dissolve BMPI during the annual meeting held on February 5, 1990.

To prove payment of their subscriptions, the defendant stockholders submitted in evidence BMPI official receipt (OR) no. 217, OR no. 218, OR no. 220, OR no. 221, OR no. 222, OR no. 223, and OR no. 227, to wit:

Receipt No.	Date	Name	Amount
217	November 5, 1987	Albert T. Yu	₱ 45,000.00
218	May 13, 1988	Albert T. Yu	₱135,000.00
220	May 13, 1988	Roberto V. Cabrera, Jr.	₱135,000.00
221	November 5, 1987	Roberto V. Cabrera, Jr.	₱ 45,000.00
222	November 5, 1987	Zenaida V. Yu	₱ 5,000.00
223	May 13, 1988	Zenaida V. Yu	₱ 15,000.00
227	May 13, 1988	Donnina C. Halley	₱262,500.00

In addition, the stockholder submitted other documents in evidence, namely:(*a*) an audit report dated March 30, 1989 prepared by Ilagan, Cepillo & Associates (submitted to the SEC

[6] *Id.*, pp. 25-28.

and the BIR);[7] (*b*) BMPI balance sheet[8] and income statement[9] as of December 31, 1988; (*c*) BMPI income tax return for the year 1988 (stamped "*received*" by the BIR);[10] (*d*) journal vouchers;[11] (*e*) cash deposit slips;[12] and (*f*) Bank of the Philippine Islands (BPI) savings account passbook in the name of BMPI.[13]

Ruling of the RTC

On November 3, 1993, the RTC rendered a decision in favor of Printwell, rejecting the allegation of payment in full of the subscriptions in view of an irregularity in the issuance of the ORs and observing that the defendants had used BMPI's corporate personality to evade payment and create injustice, *viz*:

> The claim of individual defendants that they have fully paid their subscriptions to defend[a]nt corporation, is not worthy of consideration, because: —
>
> a) in the case of defendants-spouses Albert and Zenaida Yu, it will be noted that the alleged payment made on May 13, 1988 amounting to ₱135,000.00, is covered by Official Receipt No. 218 (Exh. "2"), whereas the alleged payment made earlier on November 5, 1987, amounting to ₱5,000.00, is covered by Official Receipt No. 222 (Exh. "3"). This is cogent proof that said receipts were belatedly issued just to suit their theory since in the ordinary course of business, a receipt issued earlier must have serial numbers lower than those issued on a later date. But in the case at bar, the receipt issued on November 5, 1987 has serial numbers (222) higher than those issued on a later date (May 13, 1988).
>
> b) The claim that since there was no call by the Board of Directors of defendant corporation for the payment of unpaid

[7] *Id.*, p. 253.

[8] *Id.*, p. 254.

[9] *Id.*, p. 255.

[10] *Id.*, pp. 256-259.

[11] *Id.*, pp. 260-265.

[12] *Id.*, pp. 266-272.

[13] *Id.*, pp. 273-276.

> subscriptions will not be a valid excuse to free individual defendants from liability. Since the individual defendants are members of the Board of Directors of defendant corporation, it was within their exclusive power to prevent the fulfillment of the condition, by simply not making a call for the payment of the unpaid subscriptions. Their inaction should not work to their benefit and unjust enrichment at the expense of plaintiff.

Assuming *arguendo* that the individual defendants have paid their unpaid subscriptions, still, it is very apparent that individual defendants merely used the corporate fiction as a cloak or cover to create an injustice; hence, the alleged separate personality of defendant corporation should be disregarded (*Tan Boon Bee & Co., Inc. vs. Judge Jarencio*, G.R. No. L-41337, 30 June 1988).[14]

Applying the *trust fund doctrine*, the RTC declared the defendant stockholders liable to Printwell *pro rata*, thusly:

Defendant Business Media, Inc. is a registered corporation (Exhibits "A", "A-1" to "A-9"), and, as appearing from the Articles of Incorporation, individual defendants have the following unpaid subscriptions:

Names	Unpaid Subscription
Donnina C. Halley	₱262,500.00
Roberto V. Cabrera, Jr.	135,000.00
Albert T. Yu	135,000.00
Zenaida V. Yu	15,000.00
Rizalino V. Vineza	15,000.00
Total	₱562,500.00

and it is an established doctrine that subscriptions to the capital stock of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims (*Philippine National Bank vs. Bitulok Sawmill, Inc.*, 23 SCRA 1366) and, in fact, a corporation has no legal capacity to release a subscriber to its capital stock from the obligation to pay for his shares, and any agreement to this effect is invalid (*Velasco vs. Poizat*, 37 Phil. 802).

The liability of the individual stockholders in the instant case shall be pro-rated as follows:

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[14] *Id.*, pp. 369-370.

Names	Amount
Donnina C. Halley	₱149,955.65
Roberto V. Cabrera, Jr.	77,144.55
Albert T. Yu	77,144.55
Zenaida V. Yu	8,579.00
Rizalino V. Vineza	8,579.00
Total	₱321,342.75[15]

The RTC disposed as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants, ordering defendants to pay to plaintiff the amount of ₱291,342.76, as principal, with interest thereon at 20% per annum, from date of default, until fully paid, plus ₱30,000.00 as attorney's fees, plus costs of suit.

Defendants' counterclaims are ordered dismissed for lack of merit.

SO ORDERED.[16]

Ruling of the CA

All the defendants, except BMPI, appealed.

Spouses Donnina and Simon Halley, and Rizalino Viñeza defined the following errors committed by the RTC, as follows:

I.

THE TRIAL COURT ERRED IN HOLDING APPELLANTS-STOCKHOLDERS LIABLE FOR THE LIABILITIES OF THE DEFENDANT CORPORATION.

II.

ASSUMING *ARGUENDO* THAT APPELLANTS MAY BE LIABLE TO THE EXTENT OF THEIR UNPAID SUBSCRIPTION OF SHARES OF STOCK, IF ANY, THE TRIAL COURT NONETHELESS ERRED IN NOT FINDING THAT APPELLANTS-STOCKHOLDERS HAVE, AT THE TIME THE SUIT WAS FILED, NO SUCH UNPAID SUBSCRIPTIONS.

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[15] *Id.*, pp. 368-369.

[16] Records, p. 371.

On their part, Spouses Albert and Zenaida Yu averred:

I.

THE RTC ERRED IN REFUSING TO GIVE CREDENCE AND WEIGHT TO DEFENDANTS-APPELLANTS SPOUSES ALBERT AND ZENAIDA YU'S EXHIBITS 2 AND 3 DESPITE THE UNREBUTTED TESTIMONY THEREON BY APPELLANT ALBERT YU AND THE ABSENCE OF PROOF CONTROVERTING THEM.

II.

THE RTC ERRED IN HOLDING DEFENDANTS-APPELLANTS SPOUSES ALBERT AND ZENAIDA YU PERSONALLY LIABLE FOR THE CONTRACTUAL OBLIGATION OF BUSINESS MEDIA PHILS., INC. DESPITE FULL PAYMENT BY SAID DEFENDANTS-APPELLANTS OF THEIR RESPECTIVE SUBSCRIPTIONS TO THE CAPITAL STOCK OF BUSINESS MEDIA PHILS., INC.

Roberto V. Cabrera, Jr. argued:

I.

IT IS GRAVE ERROR ON THE PART OF THE COURT *A QUO* TO APPLY THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE PERSONALITY IN ABSENCE OF ANY SHOWING OF EXTRA-ORDINARY CIRCUMSTANCES THAT WOULD JUSTIFY RESORT THERETO.

II.

IT IS GRAVE ERROR ON THE PART OF THE COURT *A QUO* TO RULE THAT INDIVIDUAL DEFENDANTS ARE LIABLE TO PAY THE PLAINTIFF-APPELLEE'S CLAIM BASED ON THEIR RESPECTIVE SUBSCRIPTION. NOTWITHSTANDING OVERWHELMING EVIDENCE SHOWING FULL SETTLEMENT OF SUBSCRIBED CAPITAL BY THE INDIVIDUAL DEFENDANTS.

On August 14, 2002, the CA affirmed the RTC, holding that the defendants' resort to the corporate personality would create an injustice because Printwell would thereby be at a loss against whom it would assert the right to collect, *viz*:

Settled is the rule that when the veil of corporate fiction is used as a means of perpetrating fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes,

the achievements or perfection of monopoly or generally the perpetration of knavery or crime, the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals (*First Philippine International Bank vs. Court of Appeals*, 252 SCRA 259). Moreover, under this doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligations or to justify wrong (*Claparols vs. CIR*, 65 SCRA 613).

In the case at bench, it is undisputed that BMPI made several orders on credit from appellee PRINTWELL involving the printing of business magazines, wrappers and subscription cards, in the total amount of ₱291,342.76 (Record pp. 3-5, Annex "A") which facts were never denied by appellants' stockholders that they owe appellee the amount of ₱291,342.76. The said goods were delivered to and received by BMPI but it failed to pay its overdue account to appellee as well as the interest thereon, at the rate of 20% per annum until fully paid. It was also during this time that appellants stockholders were in charge of the operation of BMPI despite the fact that they were not able to pay their unpaid subscriptions to BMPI yet greatly benefited from said transactions. In view of the unpaid subscriptions, BMPI failed to pay appellee of its liability, hence appellee in order to protect its right can collect from the appellants' stockholders regarding their unpaid subscriptions. To deny appellee from recovering from appellants would place appellee in a limbo on where to assert their right to collect from BMPI since the stockholders who are appellants herein are availing the defense of corporate fiction to evade payment of its obligations.[17]

Further, the CA concurred with the RTC on the applicability of the *trust fund doctrine*, under which corporate debtors might look to the unpaid subscriptions for the satisfaction of unpaid corporate debts, stating thus:

It is an established doctrine that subscription to the capital stock of a corporation constitute a fund to which creditors have a right to look up to for satisfaction of their claims, and that the assignee in insolvency can maintain an action upon any unpaid stock subscription

[17] *Rollo*, p. 45.

in order to realize assets for the payment of its debts (*PNB vs. Bitulok Sawmill*, 23 SCRA 1366).

Premised on the above-doctrine, an inference could be made that the funds, which consists of the payment of subscriptions of the stockholders, is where the creditors can claim monetary considerations for the satisfaction of their claims. If these funds which ought to be fully subscribed by the stockholders were not paid or remain an unpaid subscription of the corporation then the creditors have no other recourse to collect from the corporation of its liability. Such occurrence was evident in the case at bar wherein the appellants as stockholders failed to fully pay their unpaid subscriptions, which left the creditors helpless in collecting their claim due to insufficiency of funds of the corporation. Likewise, the claim of appellants that they already paid the unpaid subscriptions could not be given weight because said payment did not reflect in the Articles of Incorporations of BMPI that the unpaid subscriptions were fully paid by the appellants' stockholders. For it is a rule that a stockholder may be sued directly by creditors to the extent of their unpaid subscriptions to the corporation (*Keller vs. COB Marketing*, 141 SCRA 86).

Moreover, a corporation has no power to release a subscription or its capital stock, without valuable consideration for such releases, and as against creditors, a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the Articles of Incorporation. (*PNB vs. Bitulok Sawmill*, 23 SCRA 1366).[18]

The CA declared thatthe inconsistency in the issuance of the ORs rendered the claim of full payment of the subscriptions to the capital stock unworthy of consideration; and held that the veil of corporate fiction could be pierced when it was used as a shield to perpetrate a fraud or to confuse legitimate issues, to wit:

Finally, appellants SPS YU, argued that the fact of full payment for the unpaid subscriptions was incontrovertibly established by competent testimonial and documentary evidence, namely — Exhibits "1", "2", "3" & "4", which were never disputed by appellee, clearly

[18] *Id.*, pp. 46-47.

shows that they should not be held liable for payment of the said unpaid subscriptions of BMPI.

The reliance is misplaced.

We are hereby reproducing the contents of the above-mentioned exhibits, to wit:

> Exh: "1" – YU – Official Receipt No. 217 dated November 5, 1987 amounting to ₱45,000.00 allegedly representing the initial payment of subscriptions of stockholder Albert Yu.
>
> Exh: "2" – YU – Official Receipt No. 218 dated May 13, 1988 amounting to ₱135,000.00 allegedly representing full payment of balance of subscriptions of stockholder Albert Yu. (Record, p. 352).
>
> Exh: "3" – YU – Official Receipt No. 222 dated November 5, 1987 amounting to ₱5,000.00 allegedly representing the initial payment of subscriptions of stockholder Zenaida Yu.
>
> Exh: "4" – YU – Official Receipt No. 223 dated May 13, 1988 amounting to ₱15,000.00 allegedly representing the full payment of balance of subscriptions of stockholder Zenaida Yu. (Record, p. 353).

Based on the above exhibits, we are in accord with the lower court's findings that the claim of the individual appellants that they fully paid their subscription to the defendant BMPI is not worthy of consideration, because, in the case of appellants SPS. YU, there is an inconsistency regarding the issuance of the official receipt since the alleged payment made on May 13, 1988 amounting to ₱135,000.00 was covered by Official Receipt No. 218 (Record, p. 352), whereas the alleged payment made earlier on November 5, 1987 amounting to ₱5,000.00 is covered by Official Receipt No. 222 (Record, p. 353). Such issuance is a clear indication that said receipts were belatedly issued just to suit their claim that they have fully paid the unpaid subscriptions since in the ordinary course of business, a receipt is issued earlier must have serial numbers lower than those issued on a later date. But in the case at bar, the receipt issued on November 5, 1987 had a serial number (222) higher than those issued on May 13, 1988 (218). And even assuming *arguendo* that the individual appellants have paid their unpaid subscriptions, still, it is very apparent that the veil of corporate fiction may be

pierced when made as a shield to perpetuate fraud and/or confuse legitimate issues. (*Jacinto vs. Court of Appeals*, 198 SCRA 211).[19]

Spouses Halley and Viñeza moved for a reconsideration, but the CA denied their *motion for reconsideration*.

Issues

Only Donnina Halley has come to the Court to seek a further review, positing the following for our consideration and resolution, to wit:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING *IN TOTO* THE DECISION THAT DID NOT STATE THE FACTS AND THE LAW UPON WHICH THE JUDGMENT WAS BASED BUT MERELY COPIED THE CONTENTS OF RESPONDENT'S MEMORANDUM ADOPTING THE SAME AS THE REASON FOR THE DECISION

II.

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT WHICH ESSENTIALLY ALLOWED THE PIERCING OF THE VEIL OF CORPORATE FICTION

III.

THE HONORABLE COURT OF APPEALS ERRED IN APPLYING THE TRUST FUND DOCTRINE WHEN THE GROUNDS THEREFOR HAVE NOT BEEN SATISFIED.

On the first error, the petitioner contends that the RTC lifted verbatim from the memorandum of Printwell; and submits that the RTC thereby violated the requirement imposed in Section 14, Article VIII of the Constitution[20] as well as in Section 1, Rule 36 of the *Rules of Court*,[21] to the effect that a judgment

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[19] *Rollo*, pp. 47-49.

[20] Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

x x x x x x x x x

[21] Section 1. *Rendition of judgments and final orders*.— A judgment or final order determining the merits of the case shall be in writing personally

or final order of a court should state clearly and distinctly the facts and the law on which it is based. The petitioner claims that the RTC's violation indicated that the RTC did not analyze the case before rendering its decision, thus denying her the opportunity to analyze the decision; and that a suspicion of partiality arose from the fact that the RTC decision was but a replica of Printwell's memorandum. She cites *Francisco v. Permskul*,[22] in which the Court has stated that the reason underlying the constitutional requirement, that every decision should clearly and distinctly state the facts and the law on which it is based, is to inform the reader of how the court has reached its decision and thereby give the losing party an opportunity to study and analyze the decision and enable such party to appropriately assign the errors committed therein on appeal.

On the second and third errors, the petitioner maintains that the CA and the RTC erroneously pierced the veil of corporate fiction despite the absence of cogent proof showing that she, as stockholder of BMPI, had any hand in transacting with Printwell; that the CA and the RTC failed to appreciate the evidence that she had fully paid her subscriptions; and the CA and the RTC wrongly relied on the *articles of incorporation* in determining the current list of unpaid subscriptions despite the *articles of incorporation* being at best reflective only of the pre-incorporation status of BMPI.

As her submissions indicate, the petitioner assails the decisions of the CA on: (*a*) the propriety of disregarding the separate personalities of BMPI and its stockholders by piercing the thin veil that separated them; and (*b*) the application of the *trust fund doctrine*.

Ruling

The petition for review fails.

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and directly prepared by the judge, **stating clearly and distinctly the facts and the law on which it is based**, signed by him, and filed with the clerk of the court.

[22] G.R. No. 81006, May 12, 1989, 173 SCRA 324.

I

The RTC did not violate the Constitution and the *Rules of Court*

The contention of the petitioner, that the RTC merely copied the memorandum of Printwell in writing its decision, and did not analyze the records on its own, thereby manifesting a bias in favor of Printwell, is unfounded.

It is noted that the petition for review merely generally alleges that starting from its page 5, the decision of the RTC "copied verbatim the allegations of herein Respondents in its Memorandum before the said court," as if "the Memorandum was the draft of the Decision of the Regional Trial Court of Pasig,"[23] but fails to specify either the portions allegedly lifted verbatim from the memorandum, or why she regards the decision as copied. The omission renders the petition for review insufficient to support her contention, considering that the mere similarityin language or thought between Printwell's memorandum and the trial court's decision did not necessarily justify the conclusion that the RTC simply lifted verbatim or copied from the memorandum.

It is to be observed in this connection that a trial or appellate judge may occasionally view a party's memorandum or brief as worthy of due consideration either entirely or partly. When he does so, the judgemay adopt and incorporate in his adjudication the memorandum or the parts of it he deems suitable, and yet not be guilty of the accusation of lifting or copying from the memorandum.[24] This is because ofthe avowed objective of the memorandum to contribute in the proper illumination and correct determination of the controversy. Nor is there anything untoward in the congruence of ideas and views

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[23] *Rollo*, p. 23.

[24] See, for instance, *Bank of the Philippine Islands v. Leobrera*, G.R. No. 137147, January 29, 2002, 375 SCRA 81, 86 (where the Court declared that although it was not good practice, there was nothing illegal in the act of the trial court completely copying the memorandum submitted by a party provided that the decision clearly and distinctly stated sufficient findings of fact and the law on which it was based).

about the legal issues between himself and the party drafting the memorandum.The frequency of similarities in argumentation, phraseology, expression, and citation of authorities between the decisions of the courts and the memoranda of the parties, which may be great or small, can be fairly attributable to the adherence by our courts of law and the legal profession to widely known or universally accepted precedents set in earlier judicial actions with identical factual milieus or posing related judicial dilemmas.

We also do not agree with the petitioner that the RTC's manner of writing the decision deprived her of the opportunity to analyze its decision as to be able to assign errors on appeal. The contrary appears, considering that she was able to impute and assign errors to the RTC that she extensively discussed in her appeal in the CA, indicating her thorough analysis of the decision of the RTC.

Our own reading of the trial court's decision persuasively shows that the RTC did comply with the requirements regarding the content and the manner of writing a decision prescribed in the Constitution and the *Rules of Court*. The decision of the RTC contained clear and distinct findings of facts, and stated the applicable law and jurisprudence, fully explaining why the defendants were being held liable to the plaintiff. In short, the reader was at once informed of the factual and legal reasons for the ultimate result.

II

Corporate personality not to be used to foster injustice

Printwell impleaded the petitioner and the other stockholders of BMPI for two reasons, namely: (*a*) to reach the unpaid subscriptions because it appeared that such subscriptions were the remaining visible assets of BMPI; and (*b*) to avoid multiplicity of suits.[25]

The petitioner submits that she had no participation in the transaction between BMPI and Printwell; that BMPI acted on

[25] *Rollo*, p. 55.

its own; and that she had no hand in persuading BMPI to renege on its obligation to pay. Hence, she should not be personally liable.

We rule against the petitioner's submission.

Although a corporation has a personality separate and distinct from those of its stockholders, directors, or officers,[26] such separate and distinct personality is merely a fiction created by law for the sake of convenience and to promote the ends of justice.[27] The corporate personality may be disregarded, and the individuals composing the corporation will be treated as individuals, if the corporate entity is being used as a cloak or cover for fraud or illegality; as a justification for a wrong; as an alter ego, an adjunct, or a business conduit for the sole benefit of the stockholders.[28] As a general rule, a corporation is looked upon as a legal entity, unless and until sufficient reason to the contrary appears. Thus,the courts always presume good faith, and for that reason accord prime importance to the separate personality of the corporation, disregarding the corporate personality only after the wrongdoing is first clearly and convincingly established.[29] It thus behooves the courts to be

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[26] Section 2, *Corporation Code*; Article 44 (3), *Civil Code*; *Francisco Motors Corporation v. Court of Appeals*, G.R. No. 100812, June 25, 1999, 309 SCRA 72, 82.

[27] *Prudential Bank v. Alviar*, G.R. No. 150197, July 28, 2005, 464 SCRA 353, 362; *Martinez v. Court of Appeals*, G.R. No. 131673, September 10, 2004, 438 SCRA 130, 149-150.

[28] *Light Rail Transit Authority v. Venus, Jr.*, G.R. No. 163782, March 24, 2006, 485 SCRA 361, 372; *R&E Transport, Inc. v. Latag*, G.R. No. 155214, February 13, 2004, 422 SCRA 698; *Secosa v. Heirs of Erwin Suarez Francisco*, G.R. No. 160039, June 29, 2004, 433 SCRA 273;*Gochan v. Young*, G.R. No. 131889, March 12, 2001, 354 SCRA 207, 222; *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 110203, May 9, 2001, 357 SCRA 626; *Del Rosario v. National Labor Relations Commission*, G.R. No. 85416, July 24, 1990, 187 SCRA 777, 780.

[29] *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, G.R. No. 153535, July 28, 2005, 464 SCRA 409, 424-425; *Construction & Development Corporation of the Philippines v. Cuenca*, G.R. No. 163981, August 12, 2005, 466 SCRA 714, 727; *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, G.R. No. 98310, October 24, 1996, 263 SCRA 490, 509.

careful in assessing the milieu where the piercing of the corporate veil shall be done.[30]

Although nowhere in Printwell's amended complaint or in the testimonies Printwell offered can it be read or inferred from that the petitioner was instrumental in persuading BMPI to renege onits obligation to pay; or that she induced Printwell to extend the credit accommodation by misrepresenting the solvency of BMPI to Printwell, her personal liability, together with that of her co-defendants, remained because the CA found her and the other defendant stockholders to be in charge of the operations of BMPI at the time the unpaid obligation was transacted and incurred, to wit:

> In the case at bench, it is undisputed that BMPI made several orders on credit from appellee PRINTWELL involving the printing of business magazines, wrappers and subscription cards, in the total amount of ₱291,342.76 (Record pp. 3-5, Annex "A") which facts were never denied by appellants' stockholders that they owe(d) appellee the amount of ₱291,342.76. The said goods were delivered to and received by BMPI but it failed to pay its overdue account to appellee as well as the interest thereon, at the rate of 20% per annum until fully paid. It was also during this time that appellants stockholders were in charge of the operation of BMPI despite the fact that they were not able to pay their unpaid subscriptions to BMPI yet greatly benefited from said transactions. In view of the unpaid subscriptions, BMPI failed to pay appellee of its liability, hence appellee in order to protect its right can collect from the appellants stockholders regarding their unpaid subscriptions. To deny appellee from recovering from appellants would place appellee in a limbo on where to assert their right to collect from BMPI since the stockholders who are appellants herein are availing the defense of corporate fiction to evade payment of its obligations.[31]

It follows, therefore, that whether or not the petitioner persuaded BMPI to renege on its obligations to pay, and whether or not she induced Printwell to transact with BMPI were not good defenses in the suit.

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[30] *Francisco Motors Corporation v. Court of Appeals*, *supra*, note 26.

[31] *Rollo*, p. 45.

III

Unpaid creditor may satisfy its claim from unpaid subscriptions; stockholders must prove full payment of their subscriptions

Both the RTC and the CA applied the *trust fund doctrine* against the defendant stockholders, including the petitioner.

The petitioner argues, however, that the *trust fund doctrine* was inapplicable because she had already fully paid her subscriptions to the capital stock of BMPI. She thus insists that both lower courts erred in disregarding the evidence on the complete payment of the subscription, like receipts, income tax returns, and relevant financial statements.

The petitioner's argument is devoid of substance.

The *trust fund doctrine* enunciates a —

> x x x rule that the property of a corporation is a trust fund for the payment of creditors, but such property can be called a trust fund 'only by way of analogy or metaphor.' As between the corporation itself and its creditors it is a simple debtor, and as between its creditors and stockholders its assets are in equity a fund for the payment of its debts.[32]

The *trust fund doctrine*, first enunciated in the American case of *Wood v. Dummer*,[33] was adopted in our jurisdiction in *Philippine Trust Co. v. Rivera*,[34] where this Court declared that:

> It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order

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[32] 42A, Words and Phrases, *Trust Fund Doctrine*, p. 445, citing *McIver v. Young Hardware Co.*, 57 S.E. 169, 171, 144 N.C. 478, 119 Am. St. Rep. 970; *Gallagher v. Asphalt Co. of America*, 55 A. 259, 262, 65 N.J. Eq. 258.

[33] 3 Mason 308, Fed Cas. No. 17, 944.

[34] 44 Phil. 469 (1923).

to realize assets for the payment of its debts. (*Velasco vs. Poizat*, 37 Phil. 802) x x x[35]

We clarify that the *trust fund doctrine* is not limited to reaching the stockholder's unpaid subscriptions. The scope of the doctrine when the corporation is insolvent encompasses not only the capital stock, but also other property and assets generally regarded in equity as a trust fund for the payment of corporate debts.[36] All assets and property belonging to the corporation held in trust for the benefit of creditors that were distributed or in the possession of the stockholders, regardless of full payment of their subscriptions, may be reached by the creditor in satisfaction of its claim.

Also, under the *trust fund doctrine*, a corporation has no legal capacity to release an original subscriber to its capital stock from the obligation of paying for his shares, in whole or in part,[37] without a valuable consideration,[38] or fraudulently, to the prejudice of creditors.[39] The creditor is allowed to maintain an action upon any unpaid subscriptions and thereby steps into the shoes of the corporation for the satisfaction of its debt.[40] To make out a *prima facie* case in a suit against stockholders of an insolvent corporation to compel them to contribute to the payment of its debts by making good unpaid balances upon their subscriptions, it is only necessary to establish that the stockholders have not in good faith paid the par value of the stocks of the corporation.[41]

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[35] *Id.*, p. 470.

[36] Villanueva, *Philippine Corporate Law* (2001), pp. 558, citing *Chicago Rock Island & Pac. R.R. Co. v. Howard, 7 Wall.*, 392, 19 L. Ed. 117; *Sawyer v. Hoag*, 17 Wall 610, 21 L. Ed. 731; and *Pullman v. Upton*, 96 U.S. 328, 24 L. Ed. 818.

[37] *Velasco v. Poizat*, 37 Phil. 802, 808 (1918).

[38] *Philippine Trust v. Rivera*, *supra*, note 34, pp. 470-471.

[39] *Fogg v. Blair*, 139 US 118 (1891).

[40] See *Velasco v. Poizat*, 37 Phil. 802, 806 (1918).

[41] *Tierney v. Ledden*, 121 NW 1050.

The petitioner posits that the finding of irregularity attending the issuance of the receipts (ORs) issued to the other stockholders/subscribers should not affect her because her receipt did not suffer similar irregularity.

Notwithstanding that the RTC and the CA did not find any irregularity in the OR issued in her favor, we still cannot sustain the petitioner's defense of full payment of her subscription.

In civil cases, the party who pleads payment has the burden of proving it, that even where the plaintiff must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment. In other words, the debtor bears the burden of showing with legal certainty that the obligation has been discharged by payment.[42]

Apparently, the petitioner failed to discharge her burden.

A receipt is the written acknowledgment of the fact of payment in money or other settlement between the seller and the buyer of goods, the debtor or the creditor, or the person rendering services, and the client or the customer.[43] Although a receipt is the best evidence of the fact of payment, it is not conclusive, but merely presumptive; nor is it exclusive evidence, considering that parole evidence may also establish the fact of payment.[44]

The petitioner's OR No. 227, presented to prove the payment of the balance of her subscription, indicated that her supposed payment had been made by means of a check. Thus, to discharge the burden to prove payment of her subscription, she had to

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[42] *Alonzo v. San Juan*, G.R. No. 137549, February 11, 2005, 451 SCRA 45, 55-56; *Union Refinery Corporation v. Tolentino, Sr.*, G.R. No. 155653, September 30, 2005, 471 SCRA 613, 621.

[43] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571, 590.

[44] *Philippine National Bank v. Court of Appeals*, G.R. No. 116181, April 17, 1996, 256 SCRA 491, 335-336; *Towne & City Development Corporation v. Court of Appeals*, G.R. No. 135043, July 14, 2004, 434 SCRA 356, 361-362.

adduce evidence satisfactorily proving that her payment by check was regarded as payment under the law.

Payment is defined as the delivery of money.[45] Yet, because a check is not money and only substitutes for money, the delivery of a check does not operate as payment and does not discharge the obligation under a judgment.[46] The delivery of a bill of exchange only produces the fact of payment when the bill has been encashed.[47] The following passage from *Bank of Philippine Islands v. Royeca*[48] is enlightening:

> Settled is the rule that payment must be made in legal tender. **A check is not legal tender and, therefore, cannot constitute a valid tender of payment. Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized.**
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> **To establish their defense, the respondents therefore had to present proof, not only that they delivered the checks to the petitioner, but also that the checks were encashed.** The respondents failed to do so. **Had the checks been actually encashed, the respondents could have easily produced the cancelled checks as evidence to prove the same. Instead, they merely averred that they believed in good faith that the checks were encashed because they were not notified of the dishonor of the checks and three years had already lapsed since they issued the checks.**

Because of this failure of the respondents to present sufficient proof of payment, it was no longer necessary for the petitioner to prove non-payment, particularly proof that the checks were dishonored. The burden of evidence is shifted only if the party

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[45] Art. 1232, *Civil Code*.

[46] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 49188, January 30, 1990, 181 SCRA 557, 568.

[47] Art. 1249, *Civil Code*.

[48] G.R. No. 176664, July 21, 2008, 559 SCRA 207, 217-219 (underscoring supplied for emphasis).

upon whom it is lodged was able to adduce preponderant evidence to prove its claim.

Ostensibly, therefore, the petitioner's mere submission of the receipt issued in exchange of the check did not satisfactorily establish her allegation of full payment of her subscription. Indeed, she could not even inform the trial court about the identity of her drawee bank,[49] and about whether the check was cleared and its amount paid to BMPI.[50] In fact, she did not present the check itself.

The income tax return (ITR) and statement of assets and liabilities of BMPI, albeit presented, had no bearing on the issue of payment of the subscription because they did not by themselves prove payment. ITRs establish a taxpayer's liability for taxes or a taxpayer's claim for refund. In the same manner, the deposit slips and entries in the passbook issued in the name of BMPI were hardly relevant due to their not reflecting the alleged payments.

It is notable, too, that the petitioner and her co-stockholders did not support their allegation of complete payment of their respective subscriptions with the stock and transfer book of BMPI. Indeed, books and records of a corporation (including the stock and transfer book) are admissible in evidence in favor of or against the corporation and its members to prove the corporate acts, its financial status and other matters (like the status of the stockholders), and are ordinarily the best evidence of corporate acts and proceedings.[51] Specifically, a stock and transfer book is necessary as a measure of precaution, expediency, and convenience because it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters.[52] That

[49] See TSN dated November 6, 1991, p. 4.

[50] TSN dated November 6, 1991, p. 4.

[51] *Bitong v. Court of Appeals (Fifth Division)*, G.R. No. 123553, July 13, 1998, 292 SCRA 503, 523.

[52] *Lanuza v. Court of Appeals*, G.R. No. 131394, March 28, 2005, 454 SCRA 54, 67.

she tendered no explanation why the stock and transfer book was not presented warrants the inference that the book did not reflect the actual payment of her subscription.

Nor did the petitioner present any certificate of stock issued by BMPI to her. Such a certificate covering her subscription might have been a reliable evidence of full payment of the subscriptions, considering that under Section 65 of the *Corporation Code* a certificate of stock issues only to a subscriber who has fully paid his subscription. The lack of any explanation for the absence of a stock certificate in her favor likewise warrants an unfavorable inference on the issue of payment.

Lastly, the petitioner maintains that both lower courts erred in relying on the *articles of incorporation* as proof of the liabilities of the stockholders subscribing to BMPI's stocks, averring that the *articles of incorporation* did not reflect the latest subscription status of BMPI.

Although the *articles of incorporation* may possibly reflect only the pre-incorporation status of a corporation, the lower courts' reliance on that document to determine whether the original subscribers already fully paid their subscriptions or not was neither unwarranted nor erroneous. As earlier explained, the burden of establishing the fact of full payment belonged not to Printwell even if it was the plaintiff, but to the stockholders like the petitioner who, as the defendants, averred full payment of their subscriptions as a defense. Their failure to substantiate their averment of full payment, as well as their failure to counter the reliance on the recitals found in the *articles of incorporation* simply meant their failure or inability to satisfactorily prove their defense of full payment of the subscriptions.

To reiterate, the petitioner was liable pursuant to the *trust fund doctrine* for the corporate obligation of BMPI by virtue of her subscription being still unpaid. Printwell, as BMPI's creditor, had a right to reach her unpaid subscription in satisfaction of its claim.

IV
Liability of stockholders for corporate debts is up to the extent of their unpaid subscription

The RTC declared the stockholders *pro rata* liable for the debt (based on the proportion to their shares in the capital stock of BMPI); and held the petitioner personally liable only in the amount of ₱149,955.65.

We do not agree. The RTC lacked the legal and factual support for its prorating the liability. Hence, we need to modify the extent of the petitioner's personal liability to Printwell. The prevailing rule is that a stockholder is personally liable for the financial obligations of the corporation *to the extent of his unpaid subscription*.[53] In view of the petitioner's unpaid subscription being worth ₱262,500.00, she was liable up to that amount.

Interest is also imposable on the unpaid obligation. Absent any stipulation, interest is fixed at 12% *per annum* from the date the amended complaint was filed on February 8, 1990 until the obligation (*i.e.*, to the extent of the petitioner's personal liability of ₱262,500.00) is fully paid.[54]

Lastly, we find no basis to grant attorney's fees, the award for which must be supported by findings of fact and of law as provided under Article 2208 of the *Civil Code*[55] incorporated in the body of decision of the trial court. The absence of the requisite findings from the RTC decision warrants the deletion of the attorney's fees.

ACCORDINGLY, we deny the petition for review on *certiorari*; and affirm with modification the decision promulgated

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[53] *Edward A. Keller & Co., Ltd., v. COB Group Marketing, Inc.*, G.R. No. 68907, January 16, 1986, 141 SCRA 86, 93 citing *Vda. De Salvatierra v. Hon. Garlitos etc, and Refuerzo,* 103 Phil, 757, 763 (1958).

[54] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[55] *Bunyi v. Factor*, G.R. No. 172547, June 30, 2009, 591 SCRA 350, 363*; Lapanday Agricultural and Development Corporation (LADECO) v. Angala*, G.R. No. 153076, June 21, 2007, 525 SCRA 229; *Pajuyo v. Court of Appeals*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 524.

on August 14, 2002 by ordering the petitioner to pay to Printwell, Inc. the sum of ₱262,500.00, plus interest of 12% *per annum* to be computed from February 8, 1990 until full payment.

The petitioner shall pay cost of suit in this appeal.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 165399 and 165475. May 30, 2011]

THERON V. LACSON, *petitioner, vs.* **THE HON. EXECUTIVE SECRETARY, THE PRESIDENTIAL ANTI-GRAFT COMMISSION, PUBLIC ESTATES AUTHORITY, and TEODORICO C. TAGUINOD, in his capacity as General Manager and Chief Executive Officer of the Public Estates Authority,** *respondents.*

[G.R. Nos. 165404 and 165489. May 30, 2011]

JAIME R. MILLAN and BERNARDO T. VIRAY, *petitioners, vs.* **THE HON. EXECUTIVE SECRETARY, THE PRESIDENTIAL ANTI-GRAFT COMMISSION, and the PUBLIC ESTATES AUTHORITY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE POWER OF THE OMBUDSMAN TO INVESTIGATE OFFENSES INVOLVING PUBLIC OFFICIALS IS CONCURRENT WITH OTHER SIMILARLY AUTHORIZED

AGENCIES OF THE GOVERNMENT IN RELATION TO THE OFFENSE CHARGED. — The Court has repeatedly ruled that the power of the Ombudsman to investigate offenses involving public officials is not exclusive, but is concurrent with other similarly authorized agencies of the government in relation to the offense charged. Therefore, with respect to petitioners, the Ombudsman may share its authority to conduct an investigation concerning administrative charges against them with other agencies.

2. ID.; ADMINISTRATIVE CODE OF 1987; CIVIL SERVICE COMMISSION SHALL DECIDE UPON APPEAL AN ADMINISTRATIVE DISCIPLINARY CASE INVOLVING THE IMPOSITION OF THE PENALTY OF DISMISSAL FROM THE OFFICE; CASE AT BAR. — Granting that PEA committed an error, whether substantial or procedural, petitioners should have appealed to the Civil Service Commission *(CSC)*, pursuant to Section 47, Chapter 6, Title I, Book V of E.O. No. 292 (*The Administrative Code of 1987*), to wit: "(1) **The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office."** x x x It is only after appealing the case to the CSC that it can be elevated to the CA *via* a petition for review under Rule 43 of the Rules of Court. From there, said case can be appealed to the Court through a petition for review on *certiorari* under Rule 45.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RIGHT TO APPEAL IS A STATUTORY RIGHT AND THE PARTY WHO SEEKS TO AVAIL HIMSELF OF THE SAME MUST COMPLY WITH THE REQUIREMENTS OF THE LAW. — Unfortunately, petitioners chose the wrong remedy. Instead of appealing their dismissal by the PEA to the CSC, they chose to question it before the CA. For their failure to appeal to the proper forum, the decision of the PEA dismissing them has become final and executory. It should be emphasized that "the right to appeal is a statutory right and the party who seeks to avail himself of the same must comply with the requirements of the law. Failure to do so, the right to appeal is lost." As petitioners' dismissal has become

final and executory, the Court no longer has the power to review and act on the matter.

4. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; CIVIL SERVICE OFFICERS AND EMPLOYEES; SECURITY OF TENURE; THE TENURIAL PROTECTION ACCORDED TO A CIVIL SERVANT IS A GUARANTY OF BOTH PROCEDURAL AND SUBSTANTIVE DUE PROCESS. — [A]s career service officers, the petitioners enjoy security of tenure as guaranteed under the 1987 Constitution. This is further reiterated in Section 36(a) of P.D. No. 807, otherwise known as the Civil Service Decree of the Philippines, which clearly provides 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." The tenurial protection accorded to a civil servant is a guaranty of both procedural and substantive due process. Procedural due process requires that the dismissal, when warranted, be effected only after notice and hearing. On the other hand, substantive due process requires, among others, that the dismissal be for legal cause, which must relate to and effect the administration of the office of which the concerned employee is a member of and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. Nevertheless, the right to security of tenure is not tantamount to immunity from dismissal. Petitioners cannot seek absolute protection from this constitutional provision. As long as their dismissal is for a legal cause and the requirements of due process were met, the law will not prevent their removal from office.

5. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; ESSENCE. — [T]he essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of, and to submit any evidence he may have in support of his defense. The demands of due process are sufficiently met when the parties are given the opportunity to be heard before judgment is rendered.

6. ID.; ID.; ID.; CARDINAL AND PRIMARY RIGHTS TO BE OBSERVED IN ADMINISTRATIVE PROCEEDINGS. — In the landmark case of *Ang Tibay v. Court of Industrial*

Relations, this Court laid down the cardinal and primary rights to be observed and respected in administrative proceedings: "(1) The right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof; (2) The tribunal must consider the evidence presented; (3) The decision must have some evidence to support a finding or conclusion; (4) The evidence must be substantial (that is, such relevant evidence as a reasonable mind accepts as adequate to support a conclusion); (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) The tribunal must act on its own independent consideration of the law and facts of the controversy, and not simply accept the view of a subordinate in arriving at a decision; and (7) The tribunal should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved and the reasons for the decisions rendered."

7. ID.; STATUTES; PRESIDENTIAL DECREE NO. 1084 (CHARTER OF THE PUBLIC ESTATES AUTHORITY); PUBLIC ESTATES AUTHORITY (PEA) BOARD; THE POWER TO DISCIPLINE PEA OFFICERS AND EMPLOYEES. — [T]he removal from office of petitioners was valid. PEA dismissed them for cause and in accordance with the requisites of due process. Petitioners, as PEA officers and employees, are under the disciplining authority of the PEA Board, pursuant to Section 11 of P.D. No. 1084, the *Charter of the Public Estates Authority*, which states that: "Section 11. *Appointment, control and discipline of personnel.* **The Board, upon recommendation of the General Manager of the Authority, shall** appoint the officers and employees of the Authority and its subsidiaries x x x **discipline and/ or remove them for cause** x x x."

APPEARANCES OF COUNSEL

Enrico G. Velasco for Theron V. Lacson.

Law Firm of Diaz Del Rosario & Associates for Jaime R. Millan and Bernardo T. Viray.

The Solicitor General and the *Government Corporate Counsel* for respondents.

D E C I S I O N

MENDOZA, *J.*:

These are consolidated petitions for review on *certiorari* under Rule 45 seeking to set aside the June 8, 2004 Decision and the September 20, 2004 Resolution of the Court of Appeals *(CA)* in CA-G.R. SP No. 78749 and CA-G.R. SP No.78290.[1]

The Facts

Petitioners Theron V. Lacson *(Lacson)*, Jaime R. Millan *(Millan)* and Bernardo T. Viray *(Viray)* were non-presidential appointees and career service officials of respondent Public Estates Authority *(PEA)*, holding the positions of Deputy General Manager for Finance, Legal and Administration; Assistant General Manager; and Department General Manager, respectively.[2]

On October 3, 2002, Sulficio O. Tagud *(Tagud)* filed a complaint-affidavit with the Office of the Ombudsman *(Ombudsman)* accusing petitioners Lacson, Millan and Viray for overpricing, by ₱600,000,000.00, the contract for the construction of the Central Boulevard Project *(the Project)*, otherwise known as the President Diosdado Macapagal Boulevard.[3]

Acting on the complaint, the Ombudsman proceeded with the investigation of both the criminal and the administrative aspects of the case.[4] The criminal case, docketed as OMB-C-C-02-0667-J and entitled "*Sulficio O. Tagud Jr., et al. v. Ernesto Villareal, et al.,*" charged petitioners for committing an act in violation of Republic Act *(R.A.)* No. 7080. The administrative case, docketed as OMB-C-A-02-0523-K, on the other hand,

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Mariano C. del Castillo (now a member of this Court) and Edgardo F. Sundiam.

[2] *Rollo* (G.R. Nos. 165404 and 165489), pp. 39-40.

[3] *Id.* at 42.

[4] *Id.*

charged them with Dishonesty, Serious Misconduct and Acts Inimical to the Interest of the Public Service in violation of Section 52A (1), (3) and (20) of the Uniform Rules on Administrative Cases.[5]

Meanwhile, on October 14, 2002, the Presidential Anti-Graft Commission *(PAGC)* requested the Ombudsman for authority to conduct administrative disciplinary proceedings against the petitioners and other individuals involved in the Project.[6]

In its Letter-Reply dated October 17, 2002,[7] the Ombudsman responded in the following manner:

> This has reference to your letter dated 14 October 2002 requesting for authority to conduct administrative disciplinary proceedings against the presidential appointees at the Public Estates Authority (PEA) named respondents in the case involving the construction of the President Diosdado Macapagal Boulevard (PDMB). It is our humble view that the authority is not necessary.
>
> The Office takes the opportunity to confirm the fact that the case filed with this Office on 3 October 2002, involving the subject controversy, is criminal in nature. It now bears the docket number OMB-C-C-02-0667-J, entitled "*Sulficio Tagud, Jr., et al. versus Ernest Villareal, et al.*" The basic complaint has not been further docketed as an administrative case. Thus, **the same did not preclude the subsequent filing with the PAGC of an administrative complaint against the concerned PEA officials**. [Emphasis supplied]

Subsequently, on November 12, 2002, a formal complaint was filed by the Investigation Office of PAGC charging several employees of PEA, including petitioners, with acts and/or omissions contrary to: (1) Item 1B2 of the Implementing Rules and Regulations *(IRR)* of Presidential Decree *(P.D.)* No. 1594, as amended; (2) Section 3(i), (g) and (e) of R.A. No. 3019, as amended; (3) Article 217 of the Revised Penal Code in relation to R.A. No. 3019, as amended; (4) Articles 8.1 and 8.2 of the

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[5] *Id.* at 42 and 44.

[6] *Id.* at 42 and 148.

[7] *Id.* at 148.

Construction Agreement signed on April 10, 2000 between PEA and J.D. Legaspi Construction; and (5) Section 46 (a) and (b) of Executive Order *(E.O.)* No. 292, as amended, in particular Item (B), Nos. 3, 4 and 27, in relation to R.A. No. 3019, as amended.[8]

On the same date, PAGC issued an order requiring petitioners to file their counter-affidavit/verified answer (not a motion to dismiss or motion for bill of particulars) within a non-extendible period of 10 days from receipt of the order. Preliminary conference was set on November 22, 2002.[9]

During the preliminary conference, petitioners raised several jurisdictional issues, particularly the following: the absence of certification of non-forum shopping in the complaint; the primary jurisdiction of the Ombudsman to investigate them; the lack of jurisdiction of PAGC over the complaint against them considering that they were not presidential appointees and there was no allegation that they had conspired with the presidential appointees who were charged with them; the futility of any investigation by PAGC as the same would have no bearing on the case filed with the Ombudsman; and the fatally defective complaint which was not based on personal knowledge of the complainant who, as an officer of PAGC, was merely a nominal party and was never privy to the project subject of the investigation.[10]

PAGC directed petitioners to file their memoranda to formalize their arguments.[11]

On November 28, 2002, PAGC issued a resolution recommending the dismissal of petitioners from PEA with the imposition of the corresponding accessory penalties of forfeiture of retirement benefits and disqualification from employment in the government.[12]

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[8] *Id.* at 149.

[9] *Id.* at 158.

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

[11] *Id.* at 44.

[12] *Id.* at 142.

In a letter dated December 16, 2002, the Office of the President, through the Executive Secretary, informed the PEA Chairman and Members of the Board that the President approved the recommendation of PAGC in its November 28, 2002 Resolution dismissing the petitioners from PEA and imposing upon them the accessory penalties of forfeiture of retirement benefits and disqualification from employment in the government service, and directed them to take the necessary actions to effect the instructions of the President.[13]

On December 18, 2002, petitioners received a notice dated December 4, 2002 informing them that PAGC had resolved their case and that the records therein had been forwarded to the Office of the President. It also advised the petitioners that any inquiry relative thereto should be addressed to the said office.[14]

After securing a copy of the PAGC Resolution, petitioners Millan and Viray, together with Manuel R. Beriña, Jr. *(Beriña)* filed a motion for reconsideration[15] dated January 2, 2003 with the Office of the President assailing the November 28, 2002 Resolution and Recommendation of the PAGC.

This motion was not acted upon.[16]

On July 25, 2003, PEA dismissed the petitioners. They received their copies of the notice of dismissal on July 28, 2003.[17]

Aggrieved, Beriña, Millan and Viray filed their Petition for *Certiorari* and Prohibition under Rule 65 with the CA on July 30, 2003, which was docketed as CA G.R. SP No. 78290.[18]

Lacson, on the other hand, filed a motion for reconsideration of the dismissal order[19] in a letter dated August 11, 2003 addressed

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[13] *Id.* at 102.

[14] *Id.* at 45.

[15] *Id.* at 178.

[16] *Id.* at 605.

[17] *Id.* at 145-147; *rollo* (G.R. Nos. 165399 and 165475), pp. 144 and 147.

[18] *Rollo* (G.R. Nos. 165404 and 165489), p. 201.

[19] *Rollo* (G.R. Nos. 165399 and 165475), p. 256.

to Teodorico C. Taguinod *(Taguinod)*, PEA General Manager and Chief Executive Officer. This motion, however, was denied on August 20, 2003.[20]

On August 25, 2003, Ernesto L. Enriquez *(Enriquez)* and Lacson filed a petition for *certiorari* and prohibition under Rule 65 with the CA, which was docketed as CA G.R. SP No. 78749.[21] Said petition, however, was later consolidated with CA G.R. SP No. 78290 upon motion of the Office of the Solicitor General *(OSG)*. But, before the consolidation of the mentioned petitions, writs of preliminary injunction were issued.[22] The writs, dated August 6, 2003 in CA G.R. SP No. 78290 and September 16, 2003 in CA G.R. SP No. 78749, temporarily enjoined the respondents from implementing the dismissal orders.[23]

Finally, in a consolidated decision dated June 29, 2004, the CA dismissed the consolidated petitions.[24]

On July 5, 2004 and July 22, 2004, Lacson in CA-G.R. SP No. 78749 and Beriña, Millan and Viray in CA-G.R. SP No. 78290, filed their respective motions for reconsideration.[25] Unfortunately for petitioners, both motions were denied in a resolution dated September 20, 2004.[26]

Hence, these petitions.

Upon motion of the OSG, on behalf of respondents Executive Secretary and PAGC, the Court issued a resolution ordering the consolidation of the petitions in G.R. Nos. 165404 and 165489 with the petitions in G.R. Nos. 165399 and 165475.[27]

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[20] *Id.* at 228.

[21] *Id.* at 112.

[22] *Rollo* (G.R. Nos. 165404 and 165489), p. 48.

[23] *Id.*

[24] *Id.* at 37.

[25] *Id.* at 239; *rollo* (G.R. Nos. 165399 and 165475), p. 302.

[26] *Rollo* (G.R. Nos. 165404 and 165489), p. 61.

[27] *Rollo* (G.R. Nos. 165399 and 165475), p. 540.

ISSUES

In their respective petitions for review, petitioners assigned the following errors, to wit:

I.

RESPONDENTS ERRED WHEN THEY ISSUED THE QUESTIONED MEMORANDA AND ORDERED THE DISMISSAL OF PETITIONERS ALLEGEDLY ON THE BASIS OF THE RECOMMENDATION OF THE RESPONDENT PAGC, IN THAT:

A. UNDER THE CONSTITUTION AND THE LAWS APPLICABLE, IT IS THE OMBUDSMAN WHICH HAS THE JURISDICTION TO INVESTIGATE AND RECOMMEND THE DISMISSAL OF CAREER SERVICE OFFICERS SUCH AS PETITIONERS HEREIN.

B. IT IS THE OMBUDSMAN WHO HAS PRIMARY JURISDICTION OVER THE INVESTIGATION AND REMOVAL OF PETITIONERS AND NOT RESPONDENT PAGC.

C. EXECUTIVE ORDER NO. 12, SERIES OF 2002, WHICH GRANTS RESPONDENT PAGC THE AUTHORITY TO INVESTIGATE AND RECOMMEND THE DISMISSAL OF PUBLIC OFFICERS AND EMPLOYEES WITHIN THE CIVIL SERVICE WHO ARE NON-PRESIDENTIAL APPOINTEES AS PETITIONERS HEREIN IS UNCONSTITUTIONAL AND INVALID FOR BEING CONTRARY TO LAW.

D. THE DIRECT ACTION OF RESPONDENTS IN DISMISSING THE PETITIONERS FROM THE SERVICE WITHOUT THE HEAD OF RESPONDENT PEA HAVING CONDUCTED ANY INVESTIGATION AT ALL IS CONTRARY TO LAW.

II.

RESPONDENTS ERRED IN DISMISSING THE PETITIONERS FROM RESPONDENT PEA AND PUBLIC OFFICE IN THAT:

A. PETITIONERS' DISMISSAL WAS VIOLATIVE OF THEIR RIGHT TO DUE PROCESS OF LAW, PETITIONERS HAVING BEEN DEPRIVED OF A FORMAL INVESTIGATION WHICH THEY ARE ENTITLED TO UNDER THE RULES OF PROCEDURE OF THE OMBUDSMAN AND THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.

B. THE PETITIONERS' DISMISSAL WAS VIOLATIVE OF THEIR RIGHT TO SECURITY OF TENURE AS THEY WERE TERMINATED FROM SERVICE UPON A MERE PRESIDENTIAL DIRECTIVE.

III.

RESPONDENTS ENGAGED IN PROHIBITED FORUM SHOPPING BY THE FILING OF MULTIPLE ADMINISTRATIVE COMPLAINTS AGAINST PETITIONERS FOR THE SAME CAUSE; HENCE, THE INSTANT CHARGE AGAINST PETITIONERS SHOULD BE DISMISSED.[28]

These alleged errors in G.R. Nos. 165399 and 165475 and G.R. Nos. 165404 and 165489 can be categorized into two principal issues:

(1) Whether it is the Ombudsman who should conduct the investigation on the charge of overpricing of the Project against petitioners; and

(2) Whether the Court can still review the dismissal ordered by PEA.

THE COURT'S RULING

The Ombudsman has concurrent jurisdiction with similarly authorized agencies

Petitioners argue that because they are not presidential appointees, it is only the Ombudsman which has jurisdiction over them.

In this regard, the petitioners are not correct. The Court has repeatedly ruled that the power of the Ombudsman to investigate offenses involving public officials is not exclusive, but is concurrent with other similarly authorized agencies of the government in relation to the offense charged.[29] Therefore, with

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[28] *Rollo* (G.R. Nos. 165404 and 165489), pp. 12-13; *rollo* (G.R. Nos. 165399 and 165475), pp. 26-28.

[29] *Honasan v. Panel of Investigating Prosecutors of the Department of Justice*, G.R. No. 159747, April 13, 2004, 427 SCRA 46, 65 citing *Cojuangco, Jr. v. Presidential Commission on Good Government*, G.R. Nos. 92319-20,

respect to petitioners, the Ombudsman may share its authority to conduct an investigation concerning administrative charges against them with other agencies.

At any rate, this issue is already moot and academic as the Ombudsman has terminated its investigation of petitioners. This can be gleaned from the certified true copies of the Ombudsman's May 30, 2008 Decision as well as the July 3, 2008 Review and Recommendation which the petitioners submitted in compliance with the November 22, 2010 Resolution requiring them to inform the Court of the status of their cases before the Ombudsman. It appears therefrom that the Ombudsman dismissed the administrative case against the petitioners because the charges had already been passed upon by PAGC.[30]

Having been dismissed by PEA, petitioners should have appealed to the Civil Service Commission

Despite the claim of petitioners that the decision to dismiss them was upon orders of the President or upon undue pressure exerted by the Office of the President to implement the PAGC recommendations, still the undeniable fact is that the dismissal of petitioners was actually made and effected by PEA.

Granting that PEA committed an error, whether substantial or procedural, petitioners should have appealed to the Civil Service Commission *(CSC)*, pursuant to Section 47, Chapter 6, Title I, Book V of E.O. No. 292 (*The Administrative Code of 1987*), to wit:

(1) **The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or**

October 2, 1990, 190 SCRA 226, 240; *Sanchez v. Demetriou*, G.R. Nos. 111771-77, November 9, 1993, 227 SCRA 627, and *Aguinaldo v. Domagas*, G.R. No. 98452, September 26, 1991.

[30] *Rollo* (G.R. Nos. 165399 and 165475), p. 1028.

transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned." [Emphasis Supplied]

It is only after appealing the case to the CSC that it can be elevated to the CA *via* a petition for review under Rule 43 of the Rules of Court. From there, said case can be appealed to the Court through a petition for review on *certiorari* under Rule 45.

Unfortunately, petitioners chose the wrong remedy. Instead of appealing their dismissal by the PEA to the CSC, they chose to question it before the CA.

For their failure to appeal to the proper forum, the decision of the PEA dismissing them has become final and executory. It should be emphasized that "the right to appeal is a statutory right and the party who seeks to avail himself of the same must comply with the requirements of the law. Failure to do so, the right to appeal is lost."[31]

As petitioners' dismissal has become final and executory, the Court no longer has the power to review and act on the matter.

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[31] *Acena v. Civil Service Commission*, G.R. No. 90780, February 6, 1991, 193 SCRA 623, 629, citing *Ozaeta v. Court of Appeals*, 259 Phil. 428 (1989).

There was no violation of petitioners' right to due process and security of tenure

Even granting that this Court can still review the PEA action to terminate the petitioners, they have not shown that their right to due process and security of tenure was violated.

Petitioners argue that they were denied due process because their order of dismissal was not accompanied by any justification from the PEA Board of Directors who merely relied on the findings of PAGC.

This argument, however, deserves scant consideration.

As conversely pointed out by respondents, petitioners cannot claim that their dismissal was unattended by the requisite due process because they were given the opportunity to be heard in the course of PAGC's investigation.

Indeed, as career service officers, the petitioners enjoy security of tenure as guaranteed under the 1987 Constitution.[32] This is further reiterated in Section 36(a) of P.D. No. 807, otherwise known as the Civil Service Decree of the Philippines, which clearly provides 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."

The tenurial protection accorded to a civil servant is a guaranty of both procedural and substantive due process. Procedural due process requires that the dismissal, when warranted, be effected only after notice and hearing. On the other hand, substantive due process requires, among others, that the dismissal be for legal cause, which must relate to and effect the administration of the office of which the concerned employee is a member of and must be restricted to something of a substantial nature directly affecting the rights and interests of the public.[33]

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[32] Article IX-B, Sec. 2, par. 3.

[33] *Tria v. Sto. Tomas*, G.R. No. 85670, July 31, 1991, 199 SCRA 833, 843-844 citing *Reyes v. Subido*, 160 Phil. 891 (1975) and *De los Santos v. Mallare*, 87 Phil. 293 (1950).

Nevertheless, the right to security of tenure is not tantamount to immunity from dismissal. Petitioners cannot seek absolute protection from this constitutional provision. As long as their dismissal is for a legal cause and the requirements of due process were met, the law will not prevent their removal from office.

Per records of the case, the exercise of disciplinary action against petitioners was justified because (1) they committed acts punishable under the anti-graft laws; and (2) their conduct was prejudicial to the best interest of the service.[34] Thus, their removal from office was for a legal cause.

Anent the alleged failure of respondents to observe due process, well-established is the rule that the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of, and to submit any evidence he may have in support of his defense.[35] The demands of due process are sufficiently met when the parties are given the opportunity to be heard before judgment is rendered.[36] In the landmark case of *Ang Tibay v. Court of Industrial Relations*,[37] this Court laid down the cardinal and primary rights to be observed and respected in administrative proceedings:

(1) The right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof;

(2) The tribunal must consider the evidence presented;

(3) The decision must have some evidence to support a finding or conclusion;

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[34] P.D. No. 807, Civil Service Decree of the Philippines, Sec. 36(b)(9) and (27).

[35] *Larin v. Executive* Secretary, 345 Phil. 962, 977 (1997), citing *Midas Touch Food Corp. v. NLRC*, 382 Phil. 1033 (1996).

[36] *Medina v. Commission on Audit*, G.R. No. 176478, February 4, 2008, 543 SCRA 684, 696, citing *Montemayor v. Bundalian*, 453 Phil. 158, 165 (2003).

[37] 69 Phil. 635 (1940).

(4) The evidence must be substantial (that is, such relevant evidence as a reasonable mind accepts as adequate to support a conclusion);

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;

(6) The tribunal must act on its own independent consideration of the law and facts of the controversy, and not simply accept the view of a subordinate in arriving at a decision; and

(7) The tribunal should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved and the reasons for the decisions rendered.[38]

In this regard, petitioners actively participated in the proceedings before PAGC where they were afforded the opportunity to explain their actions through their memoranda. The essence of due process is the right to be heard and this evidently was afforded to them. Thus, petitioners' assertion that their dismissal was unattended by the requisite due process cannot be sustained.

In sum, the removal from office of petitioners was valid. PEA dismissed them for cause and in accordance with the requisites of due process. Petitioners, as PEA officers and employees, are under the disciplining authority of the PEA Board, pursuant to Section 11 of P.D. No. 1084, the *Charter of the Public Estates Authority*,[39] which states that:

Section 11. *Appointment, control and discipline of personnel.* **The Board, upon recommendation of the General Manager of the Authority, shall** appoint the officers and employees of the Authority and its subsidiaries; fix their compensation, allowances and benefits, their working hours and such other conditions of employment as it may deem proper; grant them leaves of absence under such regulations as it may promulgate; **discipline and/or remove them for cause**;

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[38] *Id.* at 642-644.

[39] February 4, 1977.

and establish and maintain a recruitment and merit system for the Authority and its affiliates and subsidiaries. (Emphases supplied)

At any rate, as earlier stated, as the petitioners did not appeal the decision of the PEA to dismiss them to the CSC, it has become final and executory and the Court can no longer review it.

WHEREFORE, the petitions are *DENIED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165412. May 30, 2011]

GEORGE MILLER, *petitioner, vs.* **SECRETARY HERNANDO B. PEREZ, in his capacity as Secretary of the Department of Justice and GIOVAN BERNARDINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; REQUIRED TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE; PROBABLE CAUSE, DEFINED. — Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. To determine the existence of probable cause, there is need to conduct preliminary investigation.

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[*] Designated as additional members in lieu of Associate Justices Antonio Eduardo B. Nachura and Diosdado M. Peralta, per Raffle dated May 6, 2011.

2. ID.; ID.; ID.; PURPOSE. — A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case. Its purpose is to determine whether (a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof. It is a means of discovering which person or persons may be reasonably charged with a crime.

3. ID.; ID.; ID.; PROBABLE CAUSE; THE DETERMINATION THEREOF FOR THE PURPOSE OF FILING AN INFORMATION IN COURT IS AN EXECUTIVE FUNCTION. — It is well-settled that the determination of probable cause for the purpose of filing an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice. The Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.

4. ID.; ID.; ID.; THE COURT DOES NOT INTERFERE IN THE CONDUCT THEREOF; EXCEPTION. — The Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction. However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice. Although policy considerations call for the widest latitude of deference to the prosecutor's findings, courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutor's findings are supported by the facts, or by the law.

5. ID.; ID.; ID.; A FULL AND EXHAUSTIVE PRESENTATION OF THE PARTIES' EVIDENCE IS NOT REQUIRED

THEREIN, BUT ONLY SUCH AS MAY ENGENDER A WELL-FOUNDED BELIEF THAT AN OFFENSE HAS BEEN COMMITTED AND THAT THE RESPONDENT IS PROBABLY GUILTY THEREOF. — [I]n a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. In a preliminary investigation, a full and exhaustive presentation of the parties' evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. Certainly, it does not involve the determination of whether or not there is evidence beyond reasonable doubt pointing to the guilt of the person. Only *prima facie* evidence is required; or that which is, on its face, good and sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense; and which, if not rebutted or contradicted, will remain sufficient. Therefore, matters of evidence, such as who are the conspirators, are more appropriately presented and heard during the trial.

6. ID.; ID.; ID.; PROBABLE CAUSE; A FINDING OF A PROBABLE CAUSE DOES NOT REQUIRE AN INQUIRY WHETHER THERE IS SUFFICIENT EVIDENCE TO PROCURE A CONVICTION. — The term "probable cause" does not mean actual and positive cause nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

7. ID.; ID.; ID.; COURTS ARE EMPOWERED TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE SECRETARY OF JUSTICE WHEN THE SAME IS RENDERED WITHOUT OR IN EXCESS OF AUTHORITY; CASE AT BAR. — While it is this Court's general policy not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause, courts are nevertheless empowered to substitute their

judgment for that of the Secretary of Justice when the same was rendered without or in excess of authority. Where the Secretary of Justice dismissed the complaint against the respondent despite sufficient evidence to support a finding of probable cause, such clearly constitutes grave error, thus warranting a reversal. The CA thus clearly erred in sustaining the ruling of Secretary Perez for the exclusion of respondent Bernardino from the charge of attempted murder despite a *prima facie* case against him having been established by the evidence on record.

APPEARANCES OF COUNSEL

Guzman & Coronacion Law Offices for petitioner.
The Solicitor General for public respondent.
Madeline B. Mendoza for private respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated June 14, 2004 and Resolution[2] dated September 14, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 72395. The CA dismissed the petition for *certiorari* after finding no grave abuse of discretion on the part of public respondent Secretary of Justice in issuing his Resolution[3] dated March 21, 2002 which ordered the exclusion of respondent Giovan Bernardino (Bernardino) from the Information for attempted murder.

The facts as culled from the records:

Petitioner George Miller is a British national and an inmate at the Maximum Security Compound of the New Bilibid Prison

[1] *Rollo,* pp. 20-25. Penned by Associate Justice Romeo A. Brawner (now deceased), with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas concurring.

[2] *Id.* at 27.

[3] CA *rollo,* pp. 22-23.

(NBP) in Muntinlupa City. In November and December 1998, while serving as Acting Secretary General of the Inmates' Crusade Against Drugs (ICAD) based at NBP, petitioner wrote two confidential letters[4] addressed to then NBP Superintendent Col. Gregorio Agalo-os. The letters contained a detailed report of the alleged irregularities and drug trading activities of respondent Bernardino and Rodolfo Bernardo (Bernardo), both inmates at the Medium Security Compound and ICAD Treasurer and Chairman, respectively. Petitioner also recommended the transfer of Bernardino and Bernardo to the Maximum Security Compound.

On January 6, 1999, at around 2:30 p.m., while proceeding towards the volleyball court at the Medium Security Compound, petitioner felt a crushing blow at the back of his head. As blood oozed from his head, petitioner ran to the Infirmary for first aid treatment. Later, petitioner was transferred to the NBP hospital. On January 17, 1999, Dr. Ma. Corazon S. Alvarez, Medical Specialist at the NBP hospital, issued a Medical Certificate[5] with the following findings:

– lacerated wound, one (1), about 8 to 9 cms. long,1 cm. deep, on parietal area of the head.

– Barring unforseen (sic) circumstances, healing period is from 7 to 10 days.

Investigation of the incident was immediately ordered by Supt. Agalo-os. PGIII Cecilio M. Lopez conducted the investigation and submitted to the NBP Director his Report[6] dated January 5, 1999. Based on the sworn statement of petitioner and the verbal admissions made by inmates Constantino Quirante, Jr. (Quirante) and Roberto Ceballos (Ceballos), it was found that a few days before the incident, Bernardo and Bernardino confronted petitioner regarding the letters he wrote reporting the alleged illegal drug activities of Ace Aprid (Aprid), Bernardo and Bernardino at ICAD. Bernardo and Bernardino were furious

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[4] *Rollo*, pp. 66-77.

[5] *Id.* at 64.

[6] *Id.* at 58-61.

when petitioner admitted having authored the letters, threatening him with the words "*Mamamatay ka*," which petitioner fully understood: he is going to die. Petitioner discovered that another inmate (Valeroso) to whom he confided the matter, had divulged the existence of the letters to Bernardo and Bernardino. At the time he was hit at the back of his head, petitioner was able to turn around and saw his assailant, later identified as Quirante, who ran away through the gate leading to the "*talipapa*" where petitioner lost sight of him. Petitioner then saw two persons standing near the entrance of the "*talipapa*" and shouted at one of them asking for the identity of his assailant and if he saw the incident. However, the man just kept mum. As petitioner realized that blood was oozing from his head, he immediately went to the Infirmary.

The day after the incident, Bernardo and Bernardino along with fellow inmates Aprid, Virgilio Adrales, Rogelio Aguilar, Amable Bendoy, Arnel Modrigo, Alfred Magno and Vergel Bustamante, were brought to the investigation section.

In the course of the investigation, Quirante and Ceballos admitted their participation in the attack on petitioner and the information they provided was summarized by the investigating officer as follows:

x x x x x x x x x

While the investigation was in progress, inmates Roberto Ceballos and Constantino Quirante voluntarily surfaced admitting their participation in the clubbing of Miller. After having been informed of their constitutional rights, the two during interrogation and without second thought, narrated in detail how and why they attempted to kill Miller in the following manner:

At around 10:30 A.M. of January 6, 1999, in whiling the time under the shade of a tree in a basketball court of the Medium Security Camp, Quirante and Ceballos were approached by Aprid and Bernardino to engage their services and offered an amount of ₱1,500.00 to kill Miller. Being in dire need of money at the very moment, Quirante and Ceballos accepted the offer. Quirante admitted treacherously hitting Miller at the back of his head with a piece of wood but for failing to get him with one blow, he had to flee. On

the other hand, Ceballos admitted as the lookout and was asked by Miller the identity of his assailant right after he was clubbed. Accordingly, what motivated them to reveal everything is the fact that only ₱100.00 was paid in advance to them by Bernardino and Aprid and the balance of ₱1,400.00 as promised to be paid sooner was never fulfilled. The duo even signified their intention to reduce their participation in writing to authenticate the admission of their guilt. However, in the absence of a lawyer to assist them and to safeguard their constitutional rights, the officer on case opted not to do so.

To ascertain the veracity of Ceballos and Quirante's confession, a confrontation was made at the Director's Office. Several inmates were lined-up with Ceballos and Quirante. Miller when asked to identify his assailant, he spontaneously pointed to Quirante as the one who clubbed him on the head and likewise pointed to Ceballos as the man whom he had shouted at asking for the identity of his assailant.

x x x x x x x x x[7]

On the basis of the foregoing, PGIII Lopez recommended that Quirante and Ceballos be charged with Frustrated Murder and the case be placed under further investigation "pending the establishment of sufficient evidence to indict inmates Rodolfo Bernardo, Giovan Bernardino and Ace Aprid."[8] On February 10, 1999, the case was endorsed to the Office of the City Prosecutor submitting to the said office the following documents: (1) Investigation Report of PGIII Lopez; (2) Sworn Statement of petitioner; (3) Medical Certificate; (4) Routing Slip of Supt. Agalo-os; and (5) petitioner's letters dated November 21, 1998 and December 27, 1998 addressed to the NBP Superintendent.[9] The case was docketed as I.S. No. 99-B-01314.

On March 30, 1999, Prosecutor Antonio V. Padilla issued his resolution[10] finding the evidence sufficient to charge Quirante

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[7] *Id.* at 60.

[8] *Id.* at 60-61.

[9] *Id.* at 57.

[10] CA *rollo,* pp. 35-36.

with attempted murder while dismissing the case against Ceballos for insufficiency of evidence, thus:

> Anent the charge against Giovan Bernardino and Rodolfo Bernardo, we noticed that the same is merely anchored on suspicion and conjecture. Except the bare allegations of the complainant, nothing would link them to the assault against the complainant. In fact, their names were not even mentioned in the referral letter, dated February 10, 1999, of the Bureau of Corrections addressed to our Office.
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> WHEREFORE, premises considered, the undersigned respectfully recommends that the attached Information be filed in court. Further, it is recommended that the charge against Ceballos be dismissed on ground of insufficiency of evidence. As to the charge against Bernardino and Bernardo the same is likewise recommended dismissed on ground of insufficiency of evidence *without prejudice to the refilling of same in the event that evidence against them may be unearthed by concerned authorities.*[11] (Italics supplied.)

Thereafter, an information for attempted murder was filed against Quirante only in the Regional Trial Court (RTC) of Muntinlupa City (Branch 256), docketed as Criminal Case No. 99-452.

On or about April 14, 1999, Quirante and Ceballos executed a joint affidavit in Tagalog ("*Pinagsamang Sinumpaang Salaysay*"[12]) which was sworn to before Prosecutor Padilla. They declared that at noontime of January 6, 1999, their services were engaged through their "*Bosyo*" or Commander, Rodrigo Toledo (Toledo), who told them that if they hit ("*paluin*") petitioner they will be paid ₱1,500 by Bernardino and Bernardo. Hence, they carried out the clubbing of petitioner by 2:00 in the afternoon of the same day in front of the volleyball court of the Medium Security Compound while petitioner was walking from the "*talipapa.*" Quirante struck at petitioner from behind using a piece of wood and then ran away towards the "*talipapa.*" Petitioner turned around and saw Ceballos whom he asked for the identity of his assailant. In pain and with bleeding wound

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[11] *Id.* at 36.

[12] *Id.* at 25-26.

on his head, petitioner momentarily sat down and then brought himself to the infirmary. Ceballos thought that petitioner did not recognize him since his face was then covered with shirt cloth. A day later, Toledo handed them ₱100 as initial payment, the balance to be paid by Bernardo and Bernardino also through Toledo. However, three days passed without the ₱1,400 being paid to them, until they were called to appear before the Director's office. When questioned during the investigation, they readily owned up to the assault on petitioner because Bernardino and Bernardo did not pay the agreed amount.

The sworn statement of Quirante and Ceballos was corroborated by Toledo who likewise executed a "*Sinumpaang Salaysay*"[13] on even date stating that as early as December 1998, Bernardo and Bernardino have been talking to him about their plan to have petitioner killed. Toledo being the leader of their group (BC 45) at the Medium Security Compound, Bernardo and Bernardino promised that they will pay whoever among his (Toledo) men can do it. Toledo claimed that he initially declined but due to the daily conversations with Bernardo and Bernardino who also gave him food, he finally called on two of his men, Quirante and Ceballos, to carry out the plan to kill petitioner. He was confident that everything will be alright since Bernardo and Bernardino committed to pay ₱1,500 for the job. A day after the clubbing of petitioner, he gave Quirante and Ceballos ₱100 as initial payment by Bernardo and Bernardino for their services. Three days later, he learned that Quirante and Ceballos were summoned before the Director's Office in connection with the incident. He affirmed the truth of the admissions made by Quirante and Ceballos because Bernardo and Bernardino failed to comply with their undertaking.

On December 2, 1999, Quirante, Ceballos and Toledo executed new affidavits[14] in English, which were sworn to before Bureau of Corrections Assistant Director Joselito A. Fajardo and Prosecutor Leopoldo B. Macinas. These new affidavits gave a

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[13] *Id.* at 27.

[14] *Id.* at 193-199; DOJ records, pp. 98-102.

more detailed narration of the incident and pointed to Bernardo and Bernardino as the "masterminds" with Aprid being an accomplice. Bernardo and Aprid allegedly planned the killing of petitioner together with Toledo, the BC 45 Gang Commander, wherein Quirante agreed to be the one to kill petitioner while another gang member, Ceballos, would act as his lookout. The affidavits also mentioned what transpired during the preliminary investigation conducted by Prosecutor Padilla and the earlier April 1999 Tagalog affidavits they executed before Prosecutor Padilla. These documents were submitted during the reinvestigation conducted by Prosecutor Macinas.

Bernardo and Bernardino submitted their Joint Counter-Affidavit[15] dated January 19, 2000, stating that it was the second time they were being implicated in the case and pointing out that both investigations by the Investigation Section of the Bureau of Corrections and the Office of the City Prosecutor, Muntinlupa City showed that they have no participation in the commission of the offense. They asserted that the charges against them have no basis and the fruit of the wrong and malicious imputations of the witnesses. They denied having committed any violation of the rules and regulations of ICAD, of which Bernardo is Chairman while Bernardino is the Treasurer. They claimed that in the three years they have been serving the ICAD, the organization has more than progressed and benefitted their fellow inmates at the NBP. As to the statements given by Quirante, Ceballos and Toledo, and other witnesses, these are conflicting and muddled, showing so much evidence of them having been tutored.

Bernardo and Bernardino likewise presented a *"Sinumpaang Salaysay"*[16] executed by their witnesses, co-inmates Arnel Modrigo, Virgilio Adrales and Rogelio Aguilar. Said affiants declared that when petitioner approached them and asked if Aprid and Bernardo had anything to do with the incident, they plainly answered in the negative and told petitioner he should ask those persons instead. Everyday, petitioner goes to them asking them

[15] DOJ records, pp. 34-41.

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

to pinpoint Aprid, Bernardo and Bernardino as the masterminds in order to strengthen the case against them. Petitioner even asked them to sign a handwritten letter[17] prepared by petitioner himself, addressed to Supt. Agalo-os and which, while requesting for their transfer to the Medium Security dormitories, also affirmed the culpability of Aprid, Bernardo and Bernardino for the attempt on the life of petitioner. However, they refused to do so as they know there was no truth to the contents of said letter.

On March 20, 2000, Prosecutor Leopoldo Macinas issued his Memorandum[18] addressed to the City Prosecutor finding probable cause against Quirante, Ceballos and Toledo in conspiracy with Bernardino, Aprid and Bernardo, for the crime of attempted murder. Prosecutor Macinas was convinced that the detailed account given by Quirante, Ceballos and Toledo were executed freely and voluntarily, and found no reason why they would incriminate their co-inmates other than the truth of the statements in their affidavits. On the other hand, the defenses proffered by Bernardo and Bernardino are evidentiary matters which can be best passed upon after a full-blown trial.

WHEREFORE, it is respectfully recommended that respondents Giovan Bernardino, Rod[o]lfo Bernardo, Rodrigo Toledo, Ace Aprid and Roberto Ceballos be all indicted by way of the herein attached amended information as co-conspirators of accused Constantino Quirante in attempting to kill George Miller, *prima facie* case having been established.[19]

Consequently, an Amended Information was filed with the RTC which included the names of Bernardino, Aprid, Bernardo, Toledo and Ceballos as co-conspirators in the crime of attempted murder.

Bernardino filed a petition for review[20] with the Department of Justice (DOJ) arguing that there was no sufficient evidence

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[17] *Id.* at 30-31.

[18] CA *rollo*, pp. 37-38.

[19] *Id.* at 38.

[20] DOJ records, pp. 81-95.

presented to support a claim of conspiracy, which was based merely on conflicting testimonies or affidavits in a language foreign to the affiants. He noted that the English affidavits pointed to three people as the masterminds when originally only two have been implicated by the perpetrators (Quirante and Ceballos).

Petitioner filed his opposition,[21] alleging that contrary to the claim of Bernardino, the Bureau's investigation was far from complete as the Report of PGIII Lopez itself stated that the case is recommended for further investigation "pending the establishment of sufficient evidence to indict inmates Rodolfo Bernardo, Giovan Bernardino and Ace Aprid." As to the Tagalog affidavits, petitioner pointed out that these could not have been produced during the preliminary investigation conducted by Prosecutor Padilla since the documents were executed only on April 14, 1999, two weeks after Prosecutor Padilla rendered his resolution. Further investigation by the Bureau led to the execution of two affidavits in Tagalog (Quirante, Ceballos and Toledo) without the knowledge of petitioner. However, said Tagalog affidavits "disappeared" and petitioner was not allowed access to the Investigation Section's file despite his complaints to Director Sistoza, the Bureau and DOJ. Prior to the November 25, 1999 hearing on reinvestigation, petitioner had new affidavits in English prepared with the assistance of a former Supreme Court interpreter (inmate Chua) and these were subsequently signed by Toledo, Quirante and Ceballos and sworn to before Prosecutor Macinas. Hence, the said documentary evidence was already considered in the March 20, 2000 Resolution of Prosecutor Macinas. Petitioner further alleged that Bernardo and Bernardino received thru registered mail copy of the March 20, 2000 Resolution on June 16, 2000 but the petition for review before the DOJ was actually filed only on July 27, 2000 but conveniently dated July 14, 2000.

On March 21, 2002, public respondent, then Secretary of Justice Hernando B. Perez, issued his Resolution[22] finding merit

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[21] *Id.* at 111-119.

[22] *Supra* note 3.

in the petition. According to Secretary Perez, the new affidavits of Quirante, Ceballos and Toledo are not credible considering "the length of time they were executed since the commission of the crime" and also because said documents cannot be considered newly discovered evidence. He further noted that the affidavits were executed by the same persons investigated by the Bureau of Corrections and who all participated in the preliminary investigation of the case. At most, said affidavits can only be considered as "afterthought or made upon the prodding or influence of other persons." Public respondent thus ordered:

> WHEREFORE, the questioned resolution is MODIFIED. The City Prosecutor of Muntinlupa City is directed to amend the information to exclude accused Giovan Bernardino therefrom, and to report action taken within ten (10) days from receipt hereof.
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> SO ORDERED.[23]

On March 25, 2002, a Motion to Admit Second Amended Information, which dropped the name of respondent Bernardino as one of the accused, was filed in court.[24]

Petitioner filed a motion for reconsideration which was denied under Resolution[25] dated August 1, 2002.

Aggrieved, petitioner elevated the case to the CA *via* a Petition for *Certiorari* under Rule 65. Petitioner argued that public respondent gravely abused his discretion in disregarding all material evidence presented which clearly showed that the affidavits of Quirante, Ceballos and Toledo had not been submitted during the preliminary investigation conducted by Prosecutor Padilla. Contrary to the pronouncement of the Secretary of Justice, the absence of said affidavits could not be construed as an irregularity in the conduct of preliminary investigation. This must be so since the March 30, 1999 resolution of Prosecutor Padilla explicitly stated that if and when evidence

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[23] *Id.* at 23.

[24] DOJ records, pp. 123-126.

[25] *Id.* at 162.

be unearthed by the concerned authorities, the case may still be re-filed against the other suspects, including Bernardo and Bernardino, for conspiracy in the attempted murder of petitioner. Petitioner also faulted the public respondent in granting the petition for review despite the same having been filed out of time, more than one month after receipt of the DOJ resolution.[26]

On June 14, 2004, the CA rendered its Decision sustaining the ruling of the Secretary of Justice, finding no grave abuse of discretion in the issuance of the questioned resolutions. Petitioner's motion for reconsideration was likewise denied by the CA.

Petitioner is now before this Court, alleging that —

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW, AND AS SUCH THE INSTANT PETITION SHOULD BE ALLOWED, WHEN, IN AFFIRMING THE DECISION OF THE SECRETARY OF JUSTICE DISREGARDING THE AFFIDAVITS OF THE WITNESSES DATED APRIL 14, 1999 AND DECEMBER 2, 1999, IT RELIED HEAVILY ON A MERE INFERENCE BASED NOT ON ESTABLISHED FACTS BUT ON ANOTHER INFERENCE.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW, AND AS SUCH THE INSTANT PETITION SHOULD BE ALLOWED, WHEN, IN AFFIRMING THE DECISION OF THE SECRETARY OF JUSTICE REVERSING THE INVESTIGATING PROSECUTOR'S FINDINGS OF PROBABLE CAUSE AGAINST THE PRIVATE RESPONDENT, IT DEPARTED FROM THE ESTABLISHED FACTS, AND IN THE PROCESS, FAILED TO MAKE AN INDEPENDENT AND THOROUGH DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE IN LIGHT OF APPLICABLE LAWS, RULES AND JURISPRUDENCE.[27]

Petitioner contends that the CA erred in concluding that the decision of the Secretary of Justice was supported with factual basis notwithstanding that its conclusion that the new affidavits were executed upon the influence of persons who merely wanted

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[26] CA *rollo,* pp. 12-16.

[27] *Rollo,* p. 8.

to indict respondent Bernardino, was based merely on another inference — that there was considerable length of time before the said affidavits were executed. He assails the CA which, like the Secretary of Justice, closed its eyes on the clear indications of culpability appearing on the faces of the affidavits presented during the reinvestigation. The CA disregarded these pieces of evidence despite the same having established *prima facie* that respondent Bernardino is probably guilty of the charge, for the reason alone that since the Secretary of Justice himself "doubts the veracity of the affidavits of Quirante, Ceballos and Toledo, it would be embarrassing to compel [him] to prosecute the case."

On the other hand, respondent Bernardino in his Comment argued that the "plain, speedy and adequate remedy" of petitioner from the ruling of the Secretary of Justice should have been the trial court's resolution of the "Motion for Leave to File Second Amended Information" which had been set for hearing, and not the petition for *certiorari* he filed before the CA. He also insists that only one copy of the March 20, 2000 Memorandum of Prosecutor Macinas was sent to the NBP which was addressed to petitioner. It was only on July 4, 2000 that his family was able to secure a copy from the Office of the City Prosecutor. As to the resolution of public respondent Secretary, respondent Bernardino maintains that the Secretary of Justice was correct in disregarding the new English affidavits as they were subscribed by unlettered affiants who can hardly speak Filipino and know only the Visayan dialect.

On its part, the Office of the Solicitor General (OSG) prays for the dismissal of the petition as the Secretary of Justice committed no grave abuse of discretion in modifying the ruling of Prosecutor Macinas by ordering the exclusion of respondent Bernardino from the Information. Considering that the affidavits indicting respondent Bernardino were executed after the initial preliminary investigation and after an information was already filed in court, the Secretary of Justice was justified in giving less credence to the said evidence.

We find the petition meritorious.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[28] To determine the existence of probable cause, there is need to conduct preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case.[29] Its purpose is to determine whether (a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof. It is a means of discovering which person or persons may be reasonably charged with a crime.[30]

It is well-settled that the determination of probable cause for the purpose of filing an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice.[31] The Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.[32]

The Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to

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[28] *Cruz, Jr. v. People*, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 459, cited in *Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76 & 175013, June 1, 2007, 523 SCRA 318, 335.

[29] *Metropolitan Bank & Trust Company,* G.R. No. 180165, April 7, 2009, 584 SCRA 631, 641, citing *Villanueva v. Ople,* G.R. No. 165125, November 18, 2005, 475 SCRA 539, 553.

[30] *Id.*, citing *Gonzalez v. Hongkong & Shanghai Banking Corporation,* G.R. No. 164904, October 19, 2007, 537 SCRA 255, 269.

[31] *Insular Life Assurance Company, Limited v. Serrano,* G.R. No. 163255, June 22, 2007, 525 SCRA 400, 405-406, citing *Hegerty v. Court of Appeals,* 456 Phil. 542 (2003) and *First Women's Credit Corporation v. Perez,* G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[32] *Tan v. Ballena,* G.R. No. 168111, July 4, 2008, 557 SCRA 229, 252, citing Sec. 4, last paragraph, Rule 112, RULES OF COURT.

leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders.[33] Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction.[34]

However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[35] Although policy considerations call for the widest latitude of deference to the prosecutor's findings, courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutor's findings are supported by the facts, or by the law.[36]

In this case, Secretary Perez disregarded the new (English) affidavits executed by Quirante, Ceballos and Toledo, saying it was an afterthought or made simply upon the prodding or influence of other persons. He also stated that Quirante, Ceballos and Toledo all participated in the investigations of the Bureau of Corrections. No mention, however, was made of the fact that said new affidavits firmly reiterated what Quirante, Ceballos and Toledo declared in their earlier Tagalog affidavits and their verbal admissions during the investigation proceedings conducted by PGIII Lopez. These Tagalog affidavits in turn, although executed two weeks after the initial preliminary investigation

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[33] *Reyes v. Pearlbank Securities, Inc.* G.R. No. 171435, July 30, 2008, 560 SCRA 518, 536.

[34] *Manebo v. Acosta,* G.R. No. 169554, October 28, 2009, 604 SCRA 618, 627, citing *Alawiya v. Datumanong,* G.R. No. 164170, April 16, 2009, 585 SCRA 267, 281.

[35] *Id.* at 627-628.

[36] *Social Security System v. Department of Justice,* G.R. No. 158131, August 8, 2007, 529 SCRA 426, 442, citing *Acuña v. Deputy Ombudsman for Luzon,* G.R. No. 144692, January 31, 2005, 450 SCRA 232.

conducted by Prosecutor Padilla, were properly admitted and considered by the investigating officer, Prosecutor Macinas who took over during the reinvestigation of the case. The recommendation of Prosecutor Padilla which initially found probable cause only against Quirante, explicitly reserved the inclusion of Bernardo and Bernardino whose complicity may eventually be established, by qualifying the dismissal of the case as against them for insufficiency of evidence, with the words "without prejudice to the refiling of the same in the event that evidence against them may be unearthed by concerned authorities." The reservation made by Prosecutor Padilla for the inclusion of other persons who may have had complicity in the commission of the crime was grounded on reasonable belief that there were other conspirators or masterminds, on the basis of the findings of PGIII Lopez during the investigation by the Bureau, the verbal admissions of Quirante and Ceballos as to their culpability and the alleged masterminds they identified. Hence, the English affidavits submitted during the reinvestigation cannot be considered an afterthought and executed merely upon the influence of certain persons, and Prosecutor Macinas properly admitted those in evidence.

Indeed, the English affidavits contained a reiteration and more detailed account of the clubbing incident earlier given by Quirante, Ceballos and Toledo in the Tagalog affidavits. In these affidavits executed on December 2, 1999, as well as in the Tagalog affidavits dated April 14, 1999, they were consistent in pointing to Bernardo and Bernardino as the masterminds with Aprid as accomplice, in the crime charged. Further, the English affidavits fully explained the circumstances as to why they were not able to give sworn statements during the Bureau investigation and initial preliminary investigation conducted by Prosecutor Padilla, before whom they subscribed their Tagalog affidavits, and the reason for the execution of new affidavits in English which were subscribed before Prosecutor Macinas. Thus, the pertinent portions of their individual affidavits in English read:

Affidavit of Roberto Ceballos

x x x x x x x x x

On January 9th 1999 at around 10:00 a.m. inmate Constantino Quirante was arrested by the ICA (Inmates Custodial Aide) who took him to the Overseer's Office for interrogation. I was arrested shortly afterwards by the ICA and taken to their office also for investigation. Inmate Constantino Quirante and I were then confined to the Bartolina (disciplinary cell) where we remained for two months and twenty one days (2 mos. 21 days) before being transferred to the Maximum Security Compound.

Shortly after being confined in the disciplinary cell at the Medium Security Compound, inmate Quirante and I were summoned to the Maximum Security Compound for interrogation. We first went to the office of Superintendent Agalo-os and made a joint statement which we did not sign as we were nervous and a lawyer (Ace Aprid's counsel I think) was present. We were then taken to the ante-room of the Director's office where inmate Dr. George Miller was with an Inspector Lopez from the Bureau's Investigation Section and an [illegible] Inspector Lopez's questions in Tagalog and Dr. Miller asked why those people from ICAD wished to have him killed. We told him it was because he had informed on them with a report to the Superintendent. While confined in the Medium Security Compound's Bartolina we were visited by Giovan Bernardino who told us to keep quiet about what had happened and gave us hamburgers. He also promised us money but this never materialized.

Later in the beginning of March we were escorted to the Muntinlupa City Prosecutor's Office for a preliminary hearing. We were surprised nobody from ICAD was there but Miller said he would not prefer charges against us provided we turned State's witnesses and deposed to a counter-affidavit exposing the "masterminds", those in fact who had commissioned the crime. Quirante and I requested the Asst. Prosecutor Padilla for a few days within which to think about submitting a counter-affidavit. The Asst. Prosecutor Padilla arranged a second preliminary hearing which was on the 11th March 1999 when we informed him we were still thinking it over. Afterwards when we were transferred to the Maximum Security Compound we discovered the Bureau of Corrections' Investigation Section had commenced an inquiry into the management of ICAD. We were summoned to the Penal Superintendent's office with inmate Rudy Toledo, when Quirante and I gave a joint affidavit with Toledo giving another of his own account. All three of us were then escorted to Assistant Prosecutor Padilla's office in Muntinlupa City when we swore in our respective affidavits. I understand from Dr. Miller

these affidavits have been "misplaced" and he is unable to access copies from the Bureau of Corrections. I therefore agreed to execute another deposition which differs from the joint affidavit sworn earlier in that this is more thorough.[37]

Affidavit of Constantino Quirante

x x x x x x x x x

On January 9th, I was urinating in front of building 5 when I was called to the office of Inspector Del Prado. I changed into my issue uniform at the brigada and proceeded to Inspector Del Prado's office where I was arrested. I admitted to the "hit" on Miller and that I was acting on orders received from Boy Bernardo and Giovan Bernardino of ICAD given to the BC 45 gang commander, Rudy Toledo. I was then confined at the Medium Security Compound's disciplinary cell. Roberto Ceballos, who had been arrested and interrogated by the ICA joined me in the bartolina. Giovan Bernardino later visited us in the bartolina bringing hamburgers but no money. Upon his request I promised to keep quiet about the involvement of inmate Boy Bernardo and himself. He assured me not to worry and that everything would be taken care of.

Round about Jan. 29th, Roberto Ceballos and I were escorted to the office of Superintendent Agalo-os at the Maximum Security Compound. We gave Superintendent Agalo-os a statement but did not sign it. I believe the attorney of Ace Aprid was present so Ceballos and I were nervous of signing. We were then taken to the ante room of the Director's office where inmate Miller was present with Inspector Lopez of the Investigation Section and an interpreter. We were asked a number of questions in Tagalog by Inspector Lopez and Dr. Miller asked why Bernardino and Bernardo wished him to be killed [illegible] myself provided we completed a counter-affidavit naming Bernardo and Bernardino as the "masterminds." Asst. City Prosecutor Padilla said he would give us some time to consider and he arranged a second preliminary hearing for March 11th 1999. At the second meeting we refused to give a counter-affidavit as we had not yet decided and also we were worried.

Thereafter we were transferred to the Maximum Security Compound on the 30th of March. Approximately one month later we were called

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[37] DOJ records, pp. 98-99; CA *rollo*, pp. 195-196.

to the office of Superintendent Agalo-os with inmate Rudy Toledo. Ceballos and I prepared a joint affidavit for the Bureau's Investigation section and Rudy Toledo completed a sep[a]rate affidavit. These handwritten affidavits were photocopied in Super[intendent] Agalo-os's office by the Investigation Section Officer and at approximately 4:00 p.m. we were escorted into Assistant City Prosecutor Padilla's office w[h]ere the affidavits were sworn.

This further affidavit is made at the request of Dr. Miller, as I understand the prior affidavits sworn in front of Attorney Padilla have disappeared and he has not been allowed access to the Bureau of Correction[s'] file copies with the Investigation Section. This affidavit is more comprehensive and better than our first joint affidavit which was hurriedly completed in manuscript.[38]

Toledo's affidavit not only dovetailed with the above-mentioned circumstances surrounding the execution of the two sets of affidavits, but also positively identified Bernardo, Bernardino and Aprid as the masterminds and detailed how the crime was planned and carried out on January 6, 1999. Thus:

x x x x x x x x x

On or about December 15th, 1998 I had a meeting with inmate Giovan Bernardino at the Inmates Crusade Against Drugs restaurant in the Medium Security Compound of Camp Sampaguita. The meeting was arranged by Giovan Bernardino when he spoke to me in my capacity as commander of the BC 45 Gang (Medium Security Compound) requesting that I arrange for some of my members to kill Dr. George Miller of the Inmates Crusade Against Drugs. He offered the sum of one thousand five hundred pesos (PHP 1,500.00) to be paid after the task was accomplished. Initially, I refused to accept this mission. Thereafter, we met several times in ICAD's premises mainly, at the billiard table. At each meeting, he endeavoured to persuade me of that which he required earlier, namely to have some of my gang members kill inmate George Miller. Everytime I refused inmate Bernardino said there was no need to worry he was able to take care of everything afterwards. In January he contacted me again when I was invited to ICAD's offices where I remember seeing a computer. Inmate Rodolfo "Boy" Bernardo, the Chairman of the Inmates Crusade Against Drugs was present with another

[38] *Id.* at 100-101; *id.* at 193-194.

ICAD member inmate, Ace Aprid, who was the Sigue Sigue Sputnik commander of the Medium Security Compound. Inmates Bernardo and Aprid were the colleagues of inmate Bernardino and all of them wanted Miller killed as they stated he had submitted a report concerning their activities in ICAD to Superintendent Agalo-os and was responsible for ICAD's premises being subjected to a search by sniffer dogs at the Superintendent's direction. Later I arranged for two of my gang members, inmates Constantino Quirante and Roberto Ceballos, who agreed to do as ICAD's Bernardo, Bernardino and Aprid had requested. This was the morning of the 6th of January and it was agreed that Quirante would be the assassin while Ceballos was to be the "lookout." At the meeting it was planned that I would arrange for a distraction to take place simultaneously when Quirante and Ceballos where *[sic]* killing Miller. Inmate Miller's movements to the High School and elsewhere that day were closely monitored and in the afternoon he went to the store of inmate Boy Sabater at the talipapa. I organized Sinulog Dancing for the BC 45 Gang anniversary at Camp Sampaguita's Plaza Compound with gang members to divert attention from Quirante's and C[e]ballo's assassination of Miller. When the dancing was finished one of my men informed me that Miller was still alive and had been sent to the NBP Hospital from the Camp Sampaguita Infirmary. Quirante had struck Miller on the head from behind when he left the talipapa but failed to kill him. Afterwards inmates Giovan Bernardino and Ace Aprid gave Quirante and Ceballos the sum of one hundred pesos (PHP100.00). They were not paid the promised one thousand five hundred pesos (PHP1,500.00) as their "mission was not completed" in that they failed to kill Miller.

In February I was transferred to the Maximum Security Compound where I met Dr. Miller and informed him that I was prepared to testify regarding the foregoing. Inmates Quirante and C[e]ballos had been transferred earlier to the Maximum Security Compound after confessing their involvement. Later the Bureau of Corrections carried out an investigation regarding the affairs of ICAD when Quirante, C[e]ballos and myself where *[sic]* summoned to the Penal Superintendent Agalo-os's office. The Bureau's Investigation Section then took an affidavit from me and a joint affidavit was completed by Quirante and C[e]ballos. Thereafter we were escorted to the City Prosecutor['s] Office in Muntinlupa City where the affidavits were sworn in before the Assistant Prosecutor Padilla. Copies were taken for the Investigation Section's file. I was informed by Dr. Miller that the affidavits in the City Prosecutor['s] Office have

"disappeared" and he had been prevented to date from accessing the Bureau of Correction's file, hence this further affidavit.[39]

Confronted with these evidence clearly showing *prima facie* that respondent Bernardino was among those involved in the crime committed against petitioner, Prosecutor Macinas was correct in finding probable cause, upon reinvestigation, to include respondent Bernardino along with Bernardo, Aprid, Quirante, Ceballos and Toledo as those who will be formally charged with attempted murder and recommending the filing of an amended information for this purpose. In modifying the said amended information by dropping the name of respondent Bernardino, Secretary Perez gravely abused his discretion, his conclusion that the new affidavits were mere afterthought being contrary to the facts on record. Besides, the Secretary's act of absolving respondent Bernardino arbitrarily ignored the consistent and categorical declarations of Quirante, Ceballos and Toledo that respondent Bernardino together with Bernardo and Aprid instigated, planned and ordered the attack on petitioner, harping solely on their belated execution of affidavits even if such delay have been satisfactorily explained.

We need not over-emphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial.[40] In a preliminary investigation, a full and exhaustive presentation of the parties' evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. Certainly, it does not involve the determination of whether or not there is evidence beyond reasonable doubt pointing to the guilt of the person. Only *prima facie* evidence is required; or

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[39] *Id.* at 102; *id.* at 197.

[40] *Manebo v. Acosta, supra* note 34 at 633, citing *Metropolitan Bank & Trust Company v. Gonzales,* G.R No. 180165, April 7, 2009, 584 SCRA 631, 642.

that which is, on its face, good and sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense; and which, if not rebutted or contradicted, will remain sufficient. Therefore, matters of evidence, such as who are the conspirators, are more appropriately presented and heard during the trial.[41]

The term "probable cause" does not mean actual and positive cause nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[42]

While it is this Court's general policy not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause, courts are nevertheless empowered to substitute their judgment for that of the Secretary of Justice when the same was rendered without or in excess of authority.[43] Where the Secretary of Justice dismissed the complaint against the respondent despite sufficient evidence to support a finding of probable cause, such clearly constitutes grave error, thus warranting a reversal.[44] The CA thus clearly erred in sustaining the ruling of Secretary Perez for the exclusion of respondent Bernardino from the charge of attempted murder despite a *prima facie* case against him having been established by the evidence on record.

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[41] *Tan v. Ballena, supra* note 32 at 253-254, citing *People v. CA*, 361 Phil. 492 (1999), *Ledesma v. CA*, 344 Phil. 207, 226 (1997) and *Wa-acon v. People*, G.R. No. 164575, December 6, 2006, 510 SCRA 429, 439.

[42] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 336-337, citing *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 330-331 (1997).

[43] *Sy v. Secretary of Justice*, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 99, citing *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, March 30, 2004, 426 SCRA 460, 470.

[44] *Id.*

WHEREFORE, the petition for review on *certiorari* is *GRANTED*. The Decision dated June 14, 2004 and Resolution dated September 14, 2004 of the Court of Appeals in CA-G.R. SP No. 72395 are hereby *REVERSED* and *SET ASIDE*. The Secretary of Justice is hereby *DIRECTED* to *REINSTATE or RE-FILE* with deliberate dispatch the Amended Information which included Giovan Bernardino as accused in Criminal Case No. 99-452 of the National Capital Judicial Region, Regional Trial Court of Muntinlupa City, Branch 256.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166355. May 30, 2011]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **LUIS J. MORALES,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; PHILIPPINE CENTENNIAL EXPO '98 CORPORATION; CONSIDERED A PRIVATE CORPORATION AS IT WAS INCORPORATED UNDER THE CORPORATION CODE AND WAS REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION; CASE AT BAR. — Expocorp is a private corporation as found by the Sandiganbayan. It was not created by a special law but was incorporated under the Corporation Code and was registered with the Securities and Exchange

Commission. It is also not a government-owned or controlled corporation. Although BCDA, which owned 999,991 shares of its shares, was one of Expocorp's original incorporators, the Board of Directors of Expocorp allowed Global to buy 1,229,998 of its unused and unsubscribed shares two months after its incorporation. With the BCDA as a minority stockholder, Expocorp cannot be characterized as a government-owned or controlled corporation. In *Dante V. Liban, et al. v. Richard J. Gordon*, we pointedly said: "A government-owned or controlled corporation must be owned by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government."

2. REMEDIAL LAW; COURTS; SANDIGANBAYAN; HAS NO JURISDICTION OVER AN OFFICER OF A PRIVATE CORPORATION WHO STANDS CHARGED FOR VIOLATING REPUBLIC ACT NO. 3019; CASE AT BAR. — Section 5, Article XIII of the 1973 Constitution defines the jurisdiction of the Sandiganbayan: "Sec. 5. The [Batasang Pambansa] shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law." R.A. No. 8249, which amended Presidential Decree No. 1606, delineated the jurisdiction of the Sandiganbayan as follows: "Section 4. Section 4 of the same decree is hereby further amended to read as follows: Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving: x x x (g) Presidents, directors or trustees, or managers of government-owned or-controlled corporations, state universities or educational institutions or foundations x x x." Since Expocorp is a private corporation, not a government-owned or controlled corporation, Morales, as Expocorp's president who now stands charged for violating Section 3(e) of R.A. No. 3019 in this capacity, is beyond the Sandiganbayan's jurisdiction.

APPEARANCES OF COUNSEL

Juan Carlos T. Cuna for respondent.

D E C I S I O N

BRION, *J.*:

We review the petition for review on *certiorari*, filed by the People of the Philippines (the People), to assail the Resolution[1] of the First Division of the Sandiganbayan in Criminal Case No. 27431, entitled *"People of the Philippines versus Luis J. Morales."*

Background Facts

On June 13, 1991, then President Corazon Aquino issued Administrative Order No. 223 to commemorate the 100th anniversary of the declaration of Philippine Independence and thereby created the Committee for the National Centennial Celebrations in 1998 (*Committee*).

In 1993, then President Fidel V. Ramos issued Executive Order No. 128 (*EO 128*), entitled "Reconstituting the Committee for the Preparation of the National Centennial Celebrations in 1998." EO 128 renamed the Committee as the "National Centennial Commission" (*NCC*). The mandate of the NCC was to "take charge of the nationwide preparations for the National Celebration of the Philippine Centennial of the Declaration of Philippine Independence and the Inauguration of the Malolos Congress."[2] The late Vice-President Salvador Laurel was appointed as NCC Chairman.

On March 10, 1996, the NCC and the Bases Conversion Development Authority (*BCDA*)[3] organized the Philippine Centennial Expo '98 Corporation or Expocorp whose primary

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[1] Penned by Associate Justice Diosdado M. Peralta (now a member of this Court), and concurred in by Associate Justice Teresita J. Leonardo-de Castro (now a member of this Court) and Associate Justice Roland B. Jurado; *rollo*, pp. 24-33.

[2] Sections 1 and 2 of EO 128.

[3] A government agency created under Republic Act No. 7227.

purpose was to operate, administer, manage and develop the Philippine Centennial International Exposition 1998 (*Expo '98*).[4]

The Philippine Centennial project was marred by numerous allegations of anomalies, among them, the lack of public biddings. In 1998, Senator Ana Dominique Coseteng delivered a privilege speech in the Senate denouncing these anomalies. Because of this speech, the Senate Blue Ribbon Committee conducted an investigation on the Philippine Centennial project. In 1999, then President Joseph Estrada created the *Ad Hoc* and Independent Citizen's Committee (*AHICC*), also for the purpose of investigating these alleged anomalies. Both the Senate Blue Ribbon Committee and the AHICC recommended to the Office of the Ombudsman that a more exhaustive investigation of the Philippine Centennial project be conducted.

The investigation that followed resulted in the filing in 2001 of an Information[5] by the Ombudsman's Fact-Finding and Investigation Bureau against respondent Luis J. Morales (*Morales*), the acting president of Expocorp at the time relevant to the case. This Information served as basis for Criminal Case No. 27431 that we now consider.

The Information against Morales for violation of Section 3(e) of Republic Act (R.A.) No. 3019[6] 18 1/10

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[4] The Expo '98 in the Clark Special Economic Zone was an NCC project mandated under EO 128.

[5] *Rollo,* pp. 169-170.

[6] The Anti-Graft and Corrupt Practices Act, Section 3 — Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

That on or about September 6, 1997 or sometime prior or subsequent thereto in Pasig City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Pres. of Expo Corporation, Pasig City, a government corporation, and as such was issued one (1) Mercede[s] Benz, Model 1997-C230, bearing Serial No. WDB202023-1F-602122, and Engine No. 111974-12-027093 for his official use, and while in the performance of his official functions, acting thru evident bad faith and manifest partiality, did then and there willfully, unlawfully, and criminally give unwarranted benefits to one Rodolfo M. Lejano by selling to him said Mercede[s] Benz through Newton Motors, Inc. represented by its President Exequiel V. Mariano in the amount of Two Million Two Hundred Fifty Thousand Pesos (₱2,250,000.00), without the requisite public bidding nor approval of the Board of Directors of Expo Corporation and thereafter failed to deposit the proceeds of the sale of the aforementioned vehicle to the account of Expo Corporation, to the damage and prejudice of the Corporation and the public interest as well.[7]

In the proceedings before the Sandiganbayan, Morales moved for the dismissal of the case for lack of jurisdiction over his person and over the offense charged. He alleged that Expocorp is a private corporation and that he is not a public employee or official. He also alleged that the Sandiganbayan has no jurisdiction over his person or the offense charged as he is a private individual who has not been charged jointly with other public officials or employees. He added that Expocorp is not a government-owned or controlled corporation because it was not created by a special law, it did not have an original charter, and a majority of Expocorp's capital stock is owned by private individuals. He claimed that he did not receive any compensation from the government as defined in Section 2(a) of R.A. No. 3019, and the compensation he received as Expocorp's acting president was paid from Expocorp's funds.[8]

In its comment to Expocorp's motion, the Office of the Special Prosecutor, representing the People, insisted that Expocorp is

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[7] *Rollo*, p. 169.

[8] *Id.* at 24-25.

a government-owned corporation since its articles of incorporation showed that of its ten listed subscribers, BCDA held stocks valued at ₱99,999,100.00, while the stocks held by the rest of the subscribers had a total value of ₱900.00. The People further argued, based on the Court's ruling in *Salvador H. Laurel v. Aniano A. Desierto*,[9] that NCC Chairman Laurel was a public officer; thus, Morales was likewise a public officer since his appointment flowed from the former's exercise of his authority as chairman of both NCC and Expocorp.

In his reply, Morales averred that upon Expocorp's incorporation, BCDA owned essentially all of Expocorp's stocks. Two months after its incorporation, however, the Board of Directors of Expocorp issued a resolution declaring all its unissued and unsubscribed shares open for subscription. Global Clark Assets Corporation (*Global*) subscribed to essentially all of these unissued and unsubscribed shares; thus, Global became the majority owner with 55.16% of Expocorp's stocks, while BCDA was left as minority stockholder with 44.84% of Expocorp's stocks. Morales also asserted that the ruling in *Laurel*[10] applied *exclusively* to Chairman Laurel. Morales concluded that since Expocorp is a private corporation and an entity distinct from NCC, he, as its president, is not a public officer.

The Sandiganbayan Resolution

The Sandiganbayan, after considering the arguments of the parties, ruled that the position of a president of a government-owned or controlled corporation clearly falls within its jurisdiction. However, before Morales could be held accountable as Expocorp's president, it must first be established that Expocorp is a government-owned or controlled corporation.

The Sandiganbayan explained in *Laurel*,[11] that the Court only held that Laurel is a public officer without ruling on whether

[9] G.R. No. 145368, April 12, 2002, 381 SCRA 48.

[10] *Supra* note 9.

[11] *Ibid.*

Expocorp is a private or a government-owned corporation. The Court also held that NCC performed executive functions, hence, it was a public office; consequently, its chairman, Laurel, was a public officer. Morales, in the case at bar, is being charged as president of Expocorp only and not as an NCC official.

In ruling that Expocorp is a private corporation, the Sandiganbayan stated that it was not created by a special law nor did it have an original charter. It was organized under the Corporation Code and was registered with the Securities and Exchange Commission. According to the Sandiganbayan, Expocorp could not derive its public character from the fact that it was organized by the NCC. The Sandiganbayan ruled that applying the provisions of the Revised Administrative Code of 1987, Expocorp is a private corporation because Global owns 55.16% of its stocks; hence, its officers and employees are private individuals who are outside the jurisdiction of the Sandiganbayan. On this basis, the Sandiganbayan dismissed the information against Morales.

The Sandiganbayan denied the motion the People subsequently filed;[12] hence, the present petition.

The Issues

The People submits the following grounds:

(1) Expocorp was organized and created for the sole purpose of performing the executive functions of the National Centennial Commission and the sovereign functions of the government, and should be considered as a public office.

(2) Petitioner, as president of Expocorp, should rightfully be considered as a "public officer", falling under the jurisdiction of the Sandiganbayan.[13]

The Court's Ruling

We deny the petition for lack of merit.

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[12] *Rollo,* pp. 34-47.

[13] *Id.* at 8.

The nature of Expocorp

The People submits that Expocorp was an extension of the NCC as provided in Expocorp's Articles of Incorporation, specifically Section 2[14] which states Expocorp's primary purpose.

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[14] PRIMARY PURPOSE

To set up and establish the Philippine Centennial International Exposition 1998 (EXPO '98), a project of the National Centennial Commission envisioned and mandated under Executive Order No. 128, series of 1993, in the Clark Special Economic Zone (CSEZ) within the Provinces of Pampanga and Tarlac, Philippines as created, defined and delineated under Proclamation No. 163, series 1993, of the President of the Philippines and in furtherance of said purpose;

1. To operate, administer, manage, implement, and develop EXPO '98 conformably to and in accordance with the Detailed Feasibility study and Master Plan for said Exposition prepared by Douglas/Gallagher, Inc. and approved by the President of the Philippines;

2. To exercise oversight functions and overall jurisdiction over the operations of EXPO '98 as well as manage and oversee all plans, programs, and activities related to the implementation and operation of said Exposition;

3. To regulate the establishment, operation, and maintenance of utilities, services, and infrastructure works in all the site components of EXPO '98 and its support facilities;

4. To oversee the preparations for the implementation of the participation of countries, groups, organizations, and entities at EXPO '98;

5. To establish linkages with participating countries and coordinate their programs and activities relevant to the theme of EXPO '98;

6. To provide and prescribe the guidelines for the design and fabrication of the pavilions of participating countries that played a significant role in Philippine historical development and of other participating groups, organizations, and entities which would be reflective of the following objectives of EXPO '98 —

a) showcase the national vision of the Philippines, highlighted by a rich history and culture, and its traditional heritage and diverse cultural influences;

b) express eloquently the Filipinism sentiment of the Philippine Centennial;

c) strengthen cultural and historical linkages between the Philippines and participating countries;

d) create an image of the Philippines as a country with rich trade and tourism potentials; and

e) project the Filipino character and strengthen the sense of national pride and patriotism among the Filipino people.

7. To conceive and devise varied promotional strategies towards creating awareness and appreciation of EXPO '98 as the centerpiece of the national

It provides that Expocorp's primary purpose was to establish and operate Expo '98 — an NCC project. The People stated in its petition, thus —

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celebrations in 1998 of the centennial of the declaration of Philippine Independence and beyond that as a permanent site for the Filipino people to honor their rich heritage;

8. To encourage and invite the active and meaningful participation of the private sector in managing and overseeing EXPO '98; and

9. To forge strategic partnerships and joint ventures with local and international investors and developers in the development, maintenance, operation, and management of EXPO '98 on a turn-key basis.

SECONDARY PURPOSES

(1) To purchase, acquire, own, lease, sell and convey real properties such as lands, buildings, factories and warehouses and machineries, equipment and other personal properties as may be necessary or incidental to the conduct of the corporate business, and to pay in cash, shares of its capital stock, debentures and other evidences of indebtedness, or other securities, as may be deemed expedient, for any business or property acquired by the corporation;

(2) To borrow or raise money necessary to meet the financial requirements of its business by the issuance of bonds, promissory notes and other evidences of indebtedness, and to secure the repayment thereof by mortgage, pledge, deed of trust or lien upon the properties of the corporation or to issue pursuant to law shares of its capital stock, debentures and other evidences of indebtedness in payment for properties acquired by the corporation or for money borrowed in the prosecution of its lawful business;

(3) To invest and deal with the money and properties of the corporation in such manner as may from time to time be considered wise or expedient for the advancement of its interests and to sell, dispose of or transfer the business, properties and goodwill of the corporation or any part thereof for such consideration and under such terms as it shall see fit to accept;

(4) To aid in any manner any corporation, association, or trust estate, domestic or foreign, or any firm or individual, any shares of stock in which or any bonds, debentures, notes, securities, evidences of indebtedness, contracts, or obligations of which are held by or for this corporation, directly or indirectly or through other corporations or otherwise;

(5) To enter into any lawful arrangement for sharing profits, union of interest, unitization or farmout agreement, reciprocal concession, or cooperation, with any corporation, association, partnership, syndicate, entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any business or transaction deemed necessary, convenient or incidental to carrying out any of the purposes of this corporation;

The position occupied by respondent as President of Expocorp stemmed from his appointment as such by NCC Chair and Expocorp Chief Executive Officer Salvador H. Laurel. On the basis of such appointment, respondent served as the government's representative and Laurel's alter ego in running the affairs of Expocorp. As held in the *Laurel vs. Desierto* case, "even assuming that Expocorp is a private corporation, petitioner's position as Chief Executive officer (CEO) of Expocorp arose from his Chairmanship of the NCC. Consequently, his acts or omissions as CEO of Expocorp must be viewed in the light of his powers and functions as NCC Chair."

Having established that Expocorp, by extension, performed part of the sovereign functions delegated to the NCC, it follows that respondent, as President of Expocorp, performed tasks that likewise fall within the contemplation of the government's sovereign functions.[15]

We do not agree with the People.

Expocorp is a private corporation as found by the Sandiganbayan. It was not created by a special law but was incorporated under the Corporation Code and was registered with the Securities and Exchange Commission.[16] It is also not

(6) To acquire or obtain from any government or authority, national, provincial, municipal or otherwise, or any corporation, company or partnership or person, such charter, contracts, franchise, privileges, exemption, licenses and concessions as may be conducive to any of the objects of the corporation;

(7) To establish and operate one or more branch offices of agencies and to carry on any or all of its operations and business without any restrictions as to place or amount including the right to hold, purchase or otherwise acquire, lease, mortgage, pledge and convey or otherwise deal in and with real and personal property anywhere within the Philippines;

(8) To conduct and transact any and all lawful business, and to do or cause to be done any one or more of the acts and things herein set forth as its purposes, within or without the Philippines, and in any and all foreign countries, and to do everything necessary, desirable or incidental to the accomplishment of the purposes or the exercise of any one or more of the powers herein enumerated, or which shall at any time appear conducive to or expedient for the protection or benefit of this corporation (Annex "C", *id.* at 172-174).

[15] *Id.* at 15.

[16] *Id.* at 171.

a government-owned or controlled corporation. Although BCDA, which owned 999,991 shares[17] of its shares, was one of Expocorp's original incorporators, the Board of Directors of Expocorp allowed Global to buy 1,229,998 of its unused and unsubscribed shares two months after its incorporation. With the BCDA as a minority stockholder, Expocorp cannot be characterized as a government-owned or controlled corporation. In *Dante V. Liban, et al. v. Richard J. Gordon*,[18] we pointedly said:

> A government-owned or controlled corporation must be owned by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government.

The Sandiganbayan's Jurisdiction

Section 5, Article XIII of the 1973 Constitution defines the jurisdiction of the Sandiganbayan:[19]

> Sec. 5. The [Batasang Pambansa] shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

R.A. No. 8249,[20] which amended Presidential Decree No. 1606,[21] delineated the jurisdiction of the Sandiganbayan as follows:

> Section 4. Section 4 of the same decree is hereby further amended to read as follows:

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[17] *Id.* at 176.

[18] G.R. No. 175352, July 15, 2009, 593 SCRA 68, 88.

[19] Section 4, Article XI of the 1987 Constitution provides: The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

[20] Enacted on February 5, 1997 and entitled "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as amended, Providing Funds Therefor, and for Other Purposes."

[21] Revising Presidential Decree No. 1486 Creating a Special Court to be known as "Sandiganbayan" and for Other Purposes.

Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the *Sangguniang panlalawigan* and provincial treasurers, assessors, engineers and other provincial department heads;

(b) City mayors, vice-mayors, members of the *Sangguniang Panlungsod*, city treasurers, assessors, engineers and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations;

(2) Members of Congress and officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986. (*Underlining supplied.*)

Since Expocorp is a private corporation, not a government-owned or controlled corporation, Morales, as Expocorp's president who now stands charged for violating Section 3(e) of R.A. No. 3019 in this capacity, is beyond the Sandiganbayan's jurisdiction.

WHEREFORE, premises considered, the petition for review on *certiorari* is *DISMISSED* for lack of merit. The Sandiganbayan's June 15, 2004 Resolution in Criminal Case No. 27431, entitled "*People of the Philippines versus Luis J. Morales,*" is *AFFIRMED*. No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 171673. May 30, 2011]

BANAHAW BROADCASTING CORPORATION, *petitioner, vs.* **CAYETANO PACANA III, NOE U. DACER, JOHNNY B. RACAZA, LEONARDO S. OREVILLO, ARACELI T. LIBRE, GENOVEVO E. ROMITMAN, PORFERIA M. VALMORES, MENELEO G. LACTUAN, DIONISIO G. BANGGA, FRANCISCO D. MANGA, NESTOR A. AMPLAYO, LEILANI B. GASATAYA, LORETA G. LACTUAN, RICARDO B. PIDO, RESIGOLO M. NACUA and ANACLETO C. REMEDIO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEAL FROM A JUDGMENT INVOLVING A MONETARY AWARD; APPEAL BOND; EXEMPTION FROM THE POSTING THEREOF DOES NOT GENERALLY APPLY TO GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS. — [A]s a general rule, the government and all the attached agencies with no legal personality distinct from the former are exempt from posting appeal bonds, whereas government-owned and controlled corporations (GOCCs) are not similarly exempted. This distinction is brought about by the very reason of the appeal bond itself: to protect the presumptive judgment creditor against the insolvency of the presumptive judgment debtor. When the State litigates, it is not required to put up an appeal bond because it is presumed to be always solvent. This exemption, however, does not, as a general rule, apply to GOCCs for the reason that the latter has a personality distinct from its shareholders. Thus, while a GOCC's majority stockholder, the State, will always be presumed solvent, the presumption does not necessarily extend to the GOCC itself. However, when a GOCC becomes a "government machinery to carry out a declared government policy," it becomes similarly situated as its majority stockholder as there is the assurance that the government will necessarily fund its primary functions. Thus, a GOCC that is

sued in relation to its governmental functions may be, under appropriate circumstances, exempted from the payment of appeal fees.

2. ID.; ID.; ID.; ID.; ID.; A SEQUESTERED PRIVATE CORPORATION WHOSE OWNERSHIP IS TRANSFERRED TO THE GOVERNMENT BUT ITS FUNCTION IS PURELY COMMERCIAL AND NOT GOVERNMENTAL IS NOT EXEMPT FROM THE POSTING THEREOF; CASE AT BAR. — BBC was organized as a private corporation, sequestered in the 1980's and the ownership of which was subsequently transferred to the government in a compromise agreement. Further, it is stated in its Amended Articles of Incorporation that BBC has the following primary function: "To engage in commercial radio and television broadcasting, and for this purpose, to establish, operate and maintain such stations, both terrestrial and satellite or interplanetary, as may be necessary for broadcasting on a network wide or international basis." It is therefore crystal clear that BBC's function is purely commercial or proprietary and not governmental. As such, BBC cannot be deemed entitled to an exemption from the posting of an appeal bond.

3. ID.; ID.; ID.; ID.; ID.; THE POSTING THEREOF WITHIN THE PERIOD PROVIDED BY LAW IS NOT MERELY MANDATORY BUT JURISDICTIONAL. — [T]he NLRC did not commit an error, and much less grave abuse of discretion, in dismissing the appeal of BBC on account of non-perfection of the same. In doing so, the NLRC was merely applying Article 223 of the Labor Code x x x. The posting of the appeal bond within the period provided by law is not merely mandatory but jurisdictional. The failure on the part of BBC to perfect the appeal thus had the effect of rendering the judgment final and executory.

4. ID.; ID.; ID.; ID.; ID.; THE FILING OF A MOTION TO REDUCE BOND SHALL NOT STOP THE RUNNING OF THE PERIOD TO PERFECT APPEAL. — Neither was there an interruption of the period to perfect the appeal when BBC filed (1) its Motion for the Recomputation of the Monetary Award in order to reduce the appeal bond, and (2) its Motion for Reconsideration of the denial of the same. In *Lamzon v. National Labor Relations Commission*, where the petitioner argued that the NLRC gravely abused its discretion in dismissing

her appeal on the ground of non-perfection despite the fact that she filed a Motion for Extension of Time to File an Appeal Bond, we held: "The pertinent provision of Rule VI, NLRC Rules of Procedure, as amended, provides as follows: x x x Section 6. *Bond*. — x x x The Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond. The filing, however, of the motion to reduce bond shall not stop the running of the period to perfect appeal. Section 7. *No Extension of Period*. — No motion or request for extension of the period within which to perfect an appeal shall be allowed. x x x Considering that the motion for extension to file appeal bond remained unacted upon, petitioner, pursuant to the NLRC rules, should have seasonably filed the appeal bond within the ten (10) day reglementary period following receipt of the order, resolution or decision of the NLRC to forestall the finality of such order, resolution or decision. Besides, the rule mandates that no motion or request for extension of the period within which to perfect an appeal shall be allowed. The motion filed by petitioner in this case is tantamount to an extension of the period for perfecting an appeal." x x x In the case at bar, BBC already took a risk when it filed its Motion for the Recomputation of the Monetary Award without posting the bond itself. The Motion for the Recomputation of the Monetary Award filed by BBC, like the Motion for Extension to File the Appeal Bond in *Lamzon*, was itself tantamount to a motion for extension to perfect the appeal, which is prohibited by the rules. The NLRC already exhibited leniency when, instead of dismissing the appeal outright, it merely ordered BBC to post the required bond within 10 days from receipt of said Order, with a warning that noncompliance will cause the dismissal of the appeal for non-perfection. When BBC further demonstrated its unwillingness by completely ignoring this warning and by filing a Motion for Reconsideration on an entirely new ground, the NLRC cannot be said to have committed grave abuse of discretion by making good its warning to dismiss the appeal. Therefore, the Court of Appeals committed no error when it upheld the NLRC's dismissal of petitioner's appeal.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Gregorio A. Pizarro for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated April 15, 2005 of the Court of Appeals in CA-G.R. SP No. 57847, and its Resolution[2] dated January 27, 2006 denying petitioner's Motion for Reconsideration.

The factual and procedural antecedents of this case are as follows:

Respondents in the case at bar, Cayetano Pacana III, Noe U. Dacer, Johnny B. Racaza, Leonardo S. Orevillo, Araceli T. Libre, Genovevo E. Romitman, Porferia M. Valmores, Meneleo G. Lactuan, Dionisio G. Bangga, Francisco D. Manga, Nestor A. Amplayo, Leilani B. Gasataya, Loreta G. Lactuan, Ricardo B. Pido, Resigolo M. Nacua and Anacleto C. Remedio (collectively, the DXWG personnel), are supervisory and rank and file employees of the DXWG-Iligan City radio station which is owned by petitioner Banahaw Broadcasting Corporation (BBC), a corporation managed by Intercontinental Broadcasting Corporation (IBC).

On August 29, 1995, the DXWG personnel filed with the Sub-regional Arbitration Branch No. XI, Iligan City a complaint for illegal dismissal, unfair labor practice, reimbursement of unpaid Collective Bargaining Agreement (CBA) benefits, and attorney's fees against IBC and BBC.

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[1] *Rollo*, pp. 57-73; penned by Associate Justice Romulo V. Borja with Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizarro, concurring.

[2] *Id.* at 74-75.

On June 21, 1996, Labor Arbiter Abdullah L. Alug rendered his Decision[3] awarding the DXWG personnel a total of ₱12,002,157.28 as unpaid CBA benefits consisting of unpaid wages and increases, 13th month pay, longevity pay, sick leave cash conversion, rice and sugar subsidy, retirement pay, loyalty reward and separation pay.[4] The Labor Arbiter denied the other claims of the DXWG personnel for Christmas bonus, educational assistance, medical check-up and optical expenses. Both sets of parties appealed to the National Labor Relations Commission (NLRC).

On May 15, 1997, a Motion to Dismiss, Release, Waiver and Quitclaim,[5] was jointly filed by IBC and the DXWG personnel based on the latter's admission that IBC is not their employer

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[3] *Id.* at 111-125.

[4] WHEREFORE, premises considered, respondents IBC and BBC are hereby ordered to severally and jointly pay complainants the following as presented opposite their respective names, to wit:

1. Cayetano Pacana III	₱ 1,730,535.75
2. Noe U. Dacer	886,776.43
3. Johnny B. Racaza	1,271,739.34
4. Leonardo S. Orevillo	1,097,752.70
5. Araceli T. Libre	543,467.22
6. Genovevo E. Romitman	716,455.72
7. Porferia M. Valmores	562,564.78
8. Meneleo G. Lactuan	678,995.91
9. Dionisio G. Bangga	580,873.78
10. Francisco D. Manga	29,286.65
11. Nestor A. Amplayo	583,798.51
12. Leilani B. Gasataya	42,669.75
13. Loreta G. Lactuan	757,252.52
14. Ricardo B. Pido	756,835.64
15. Resigolo M. Nacua	887,344.75
16. Anacleto C. Remedio	887,345.39
GRAND TOTAL	₱ 12,002,157.28

Plus 10% of the grand total as attorney's fees.

All other claims not discussed above are hereby ordered dismissed for want of legal basis. (*Rollo*, p. 125.)

[5] CA *rollo*, pp. 140-141.

as it does not own DXWG-Iligan City. On April 21, 1997, the NLRC granted the Motion and dismissed the case with respect to IBC.[6]

BBC filed a Motion for Reconsideration alleging that (1) neither BBC nor its duly authorized representatives or officers were served with summons and/or a copy of the complaint when the case was pending before the Labor Arbiter or a copy of the Decision therein; (2) since the liability of IBC and BBC is solidary, the release and quitclaim issued by the DXWG personnel in favor of IBC totally extinguished BBC's liability; (3) it was IBC that effected the termination of the DXWG personnel's employment; (4) the DXWG personnel are members of the IBC union and are not employees of BBC; and (5) the sequestered properties of BBC cannot be levied upon.

On December 12, 1997, the NLRC issued a Resolution vacating the Decision of Labor Arbiter Alug and remanding the case to the arbitration branch of origin on the ground that while the complaint was filed against both IBC and BBC, only IBC was served with summons, ordered to submit a position paper, and furnished a copy of the assailed decision.[7]

On October 15, 1998, Labor Arbiter Nicodemus G. Palangan rendered a Decision adjudging BBC to be liable for the same amount discussed in the vacated Decision of Labor Arbiter Alug:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Banahaw Broadcasting Corporation to pay complainants the following:

1. Cayetano Pacana III	₱ 1,730,535.75
2. Noe U. Dacer	886,776.43
3. Johnny B. Racaza	1,271,739.34
4. Leonardo S. Orevillo	1,097,752.70
5. Araceli T. Libre	543,467.22
6. Genovevo E. Romitman	716,455.72
7. Porferia M. Valmores	562,564.78

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[6] *Id.* at 143-145.

[7] *Id.* at 147-150.

8. Meneleo G. Lactuan	678,995.91
9. Dionisio G. Bangga	580,873.78
10. Francisco D. Manga	29,286.65
11. Nestor A. Amplayo	583,798.51
12. Leilani B. Gasataya	42,669.75
13. Loreta G. Lactuan	757,252.52
14. Ricardo B. Pido	756,835.64
15. Resigolo M. Nacua	887,344.75
16. Anacleto C. Remedio	887,345.39
GRAND TOTAL	₱ 12,002,157.28

Respondent is likewise ordered to pay 10% of the total award as attorney's fee.[8]

Both BBC and respondents appealed to the NLRC anew. The appeal was docketed as NLRC CA No. M-004419-98. In their appeal, the DXWG personnel reasserted their claim for the remaining CBA benefits not awarded to them, and alleged error in the reckoning date of the computation of the monetary award. BBC, in its own Memorandum of Appeal, challenged the monetary award itself, claiming that such benefits were only due to IBC, not BBC, employees.[9] In the same Memorandum of Appeal, BBC incorporated a Motion for the Recomputation of the Monetary Award (of the Labor Arbiter),[10] in order that the appeal bond may be reduced.

On September 16, 1999, the NLRC issued an Order[11] denying the Motion for the Recomputation of the Monetary Award. According to the NLRC, such recomputation would result in the premature resolution of the issue raised on appeal. The NLRC ordered BBC to post the required bond within 10 days from receipt of said Order, with a warning that noncompliance will cause the dismissal of the appeal for non-perfection.[12] Instead

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[8] *Id.* at 194.

[9] *Id.* at 198-199.

[10] *Id.* at 199.

[11] *Rollo*, pp. 237-238.

[12] *Id.* at 238.

of complying with the Order to post the required bond, BBC filed a Motion for Reconsideration,[13] alleging this time that since it is wholly owned by the Republic of the Philippines, it need not post an appeal bond.

On November 22, 1999, the NLRC rendered its Decision[14] in NLRC CA No. M-004419-98. In said Decision, the NLRC denied the Motion for Reconsideration of BBC on its September 16, 1999 Order and accordingly dismissed the appeal of BBC for non-perfection. The NLRC likewise dismissed the appeal of the DXWG personnel for lack of merit in the same Decision.

BBC filed a Motion for Reconsideration of the above Decision. On January 13, 2000, the NLRC issued a Resolution[15] denying the Motion.

BBC filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the above dispositions by the NLRC. The Petition was docketed as CA-G.R. SP No. 57847.

On April 15, 2005, the Court of Appeals rendered the assailed Decision denying BBC's Petition for *Certiorari*. The Court of Appeals held that BBC, though owned by the government, is a corporation with a personality distinct from the Republic or any of its agencies or instrumentalities, and therefore do not partake in the latter's exemption from the posting of appeal bonds. The dispositive portion of the Decision states:

> WHEREFORE, finding no grave abuse of discretion on the part of public respondents, We DENY the petition. The challenged decision of public respondent dated November 22, 1999, as well as its subsequent resolution dated January 13, 2000, in NLRC Case No. M-004419-98 are hereby AFFIRMED. The decision of the Labor Arbiter dated October 15, 1998 in RAB Case No. 12-09-00309-95 is hereby declared FINAL AND EXECUTORY.[16]

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[13] *Id.* at 239-243.

[14] CA *rollo*, pp. 49-61.

[15] *Id.* at 63-64.

[16] *Rollo*, p. 72.

On January 27, 2006, the Court of Appeals rendered the assailed Resolution denying the Motion for Reconsideration. Hence, this Petition for Review.

As stated above, both the NLRC and the Court of Appeals dealt with only one issue — whether BBC is exempt from posting an appeal bond. To recall, the NLRC issued an Order denying BBC's Motion for the Recomputation of the Monetary Award and ordered BBC to post the required bond within 10 days from receipt of said Order, with a warning that noncompliance will cause the dismissal of the appeal for non-perfection.[17] However, instead of heeding the warning, BBC filed a Motion for Reconsideration, alleging that it need not post an appeal bond since it is wholly owned by the Republic of the Philippines.

There is no dispute as regards the history of the ownership of BBC and IBC. Both BBC and IBC, together with Radio Philippines Network (RPN-9), were formerly owned by Roberto S. Benedicto (Benedicto). In the aftermath of the 1986 people power revolution, the three companies, collectively denominated as Broadcast City, were sequestered and placed under the control and management of the Board of Administrators (BOA).[18] The BOA was tasked to operate and manage its business and affairs subject to the control and supervision of the Presidential Commission on Good Government (PCGG).[19] In December 1986, Benedicto and PCGG allegedly executed a **Management Agreement** whereby the Boards of Directors of BBC, IBC and RPN-9 were agreed to be reconstituted. Under the agreement, 2/3 of the membership of the Boards of Directors will be PCGG nominees, and 1/3 will be Benedicto nominees. A reorganized Board of Directors was thus elected for each of the three corporations. The BOA, however, refused to relinquish its function, paving for the filing by Benedicto of a Petition for Prohibition with this Court in 1989, which was docketed as G.R. No. 87710.

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[17] *Id.* at 238.

[18] Sequestration Order; CA *rollo*, p. 159.

[19] Executive Order No. 11, April 8, 1986.

In the meantime, it was in 1987 when the Republic, represented by the PCGG, filed the case for recovery/reconveyance/reversion and damages against Benedicto. Following our ruling in *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. Presidential Commission on Good Government*,[20] the institution of this suit necessarily placed BBC, IBC and RPN-9 under *custodia legis* of the Sandiganbayan.

On November 3, 1990, Benedicto and the Republic executed a **Compromise Agreement** whereby Benedicto, in exchange for immunity from civil and criminal actions, "ceded to the government certain pieces of property listed in Annex A of the agreement and assigned or transferred whatever rights he may have, if any, to the government over all corporate assets listed in Annex B of the agreement."[21] BBC is one of the properties listed in Annex B.[22] Annex A, on the other hand, includes the following entry:

CESSION TO THE GOVERNMENT:

I. PHILIPPINE ASSETS:

x x x x x x x x x

7. *Inter-Continental Broadcasting Corporation (IBC), 100% of total assets estimated at ₱450 million*, consisting of 41,000 sq.mtrs. of land, more or less, located at Broadcast City Quezon City, other land and buildings in various Provinces, and operates the following TV stations:

   a. TV 13 (Manila)
   b. DY/TV 13 (Cebu)
   c. DX/TV 13 (Davao)
   d. DYOB/TV 12 (Iloilo)
   e. DWLW/TV 13 (Laoag)

   as well as the following Radio Stations

   a. DZMZ-FM Manila

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[20] 234 Phil. 180 (1987).

[21] *Republic v. Sandiganbayan*, G.R. No. 108292, September 10, 1993, 226 SCRA 314, 319.

[22] CA *rollo*, p. 174.

b. DYBQ Iloilo
c. DYOO Roxas
d. DYRG Kalibo
e. DWLW Laoag
f. DWGW Legaspi
g. DWDW Dagupan
h. DWNW Naga
i. **DXWG Iligan** . . . . . ₱352,455,286.00[23]
(Emphasis supplied.)

Then Senator Teofisto T. Guingona, Jr. filed a Petition for *Certiorari* and Prohibition seeking to invalidate the Compromise Agreement, which was docketed as G.R. No. 96087. The Petition was consolidated with G.R. No. 87710.

On March 31, 1992, this Court, in *Benedicto v. Board of Administrators of Television Stations RPN, BBC and IBC*,[24] promulgated its Decision on the consolidated petitions in G.R. No. 87710 and G.R. No. 96087. Holding that the authority of the BOA had become *functus oficio*, we granted the Petition in G.R. No. 87710, ordering the BOA to "cease and desist from further exercising management, operation and control of Broadcast City and is hereby directed to surrender the management, operation and control of Broadcast City to the reorganized Board of Directors of each of the Broadcast City television stations."[25] We denied the Petition in G.R. No. 96087 for being premature, since the approval of the Compromise Agreement was still pending in the Sandiganbayan.[26]

The Sandiganbayan subsequently approved the Compromise Agreement on October 31, 1992, and the approval was affirmed by this Court on September 10, 1993 in *Republic v. Sandiganbayan*.[27] Thus, both BBC and IBC were government-

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[23] *Id.* at 173.

[24] G.R. Nos. 87710 and 96087, March 31, 1992, 207 SCRA 659.

[25] *Id.* at 668.

[26] *Id.*

[27] *Supra* note 21.

owned and controlled during the time the DXWG personnel filed their original complaint on August 29, 1995.

In the present Petition, BBC reiterates its argument that since it is now wholly and solely owned by the government, the posting of the appeal bond was unnecessary on account of the fact that it is presumed that the government is always solvent.[28] Citing the 1975 case of *Republic (Bureau of Forestry) v. Court of Appeals*,[29] BBC adds before us that it is not even necessary for BBC to raise its exempt status as the NLRC should have taken cognizance of the same.[30]

When the Court of Appeals affirmed the dismissal by the NLRC of BBC's appeal for failure of the latter to post an appeal bond, it relied to the ruling of this Court in *Republic v. Presiding Judge, Branch XV, Court of First Instance of Rizal*.[31] The appellate court, noting that BBC's primary purpose as stated in its Articles of Incorporation is to engage in commercial radio and television broadcasting, held that BBC did not meet the criteria enunciated in *Republic v. Presiding Judge* for exemption from the appeal bond.[32]

We pertinently held in *Republic v. Presiding Judge*:

> The sole issue implicit in this petition is whether or not the RCA is exempt from paying the legal fees and from posting an appeal bond.
>
> We find merit in the petition.
>
> To begin with, We have to determine whether the RCA is a governmental agency of the Republic of the Philippines without a separate, distinct and independent legal personality from the latter. We maintain the affirmative. The legal character of the RCA as a governmental agency had already been passed upon in the case of *Ramos vs. Court of Industrial Relations* wherein this Court held:

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[28] *Rollo*, pp. 35-36.

[29] 160-A Phil. 465 (1975).

[30] *Rollo*, p. 36.

[31] 188 Phil. 69 (1980).

[32] *Rollo*, p. 68.

"Congress, by said Republic Act 3452 approved on June 14, 1962, created RCA, in pursuance of its declared policy, *viz*:

> 'SECTION 1. It is hereby declared to be the policy of the Government that in order to stabilize the price of *palay*, rice and corn, it shall engage in the 'purchase of these basic foods directly from those tenants, farmers, growers, producers and landowners in the Philippines who wish to dispose of their produce at a price *that will afford them a fair and just return* for their labor and capital investment and whenever circumstances brought about by any cause, natural or artificial, should so require, shall sell and dispose of these commodities to the consumers at areas of consumption *at a price that is within their reach*.'

"RCA is, therefore, a government machinery to carry out a declared government policy just noted, and not for profit.

"And more. By law, RCA depends for its continuous operation on appropriations yearly set aside by the General Appropriations Act. So says Section 14 of Republic Act 3452:

> 'SECTION 14. The sum of one hundred million pesos is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, for the capitalization of the Administration: *Provided*, That the annual operational expenses of the Administration shall not exceed three million pesos of the said amount: *Provided further*, That the budget of the Rice and Corn Administration for the fiscal year nineteen hundred and sixty-three to nineteen hundred and sixty-four and the years thereafter shall be included in the General appropriations submitted to Congress.'

"RCA is not possessed of a separate and distinct corporate existence. On the contrary, by the law of its creation, it is an office directly under the Office of the President of the Philippines."

Respondent, however, contends that the RCA has been created to succeed to the corporate assets, liabilities, functions and powers of the abolished National Rice & Corn Corporation which is a government-owned and controlled corporation separate and distinct from the Government of the Republic of the Philippines. He further

contends that the RCA, being a duly capitalized entity doing mercantile activity engaged in the buying and selling of *palay*, rice, and corn cannot be the same as the Republic of the Philippines; rather, it is an entity separate and distinct from the Republic of the Philippines. These contentions are patently erroneous.

x x x x x x x x x

The mercantile activity of RCA in the buying and selling of *palay*, rice, and corn is only incident to its primary governmental function which is to carry out its declared policy of subsidizing and stabilizing the price of *palay*, rice, and corn in order to make it well within the reach of average consumers, an object obviously identified with the primary function of government to serve the well-being of the people.

As a governmental agency under the Office of the President the RCA is thus exempt from the payment of legal fees as well as the posting of an appeal bond. Under the decisional laws which form part of the legal system of the Philippines the Republic of the Philippines is exempt from the requirement of filing an appeal bond on taking an appeal from an adverse judgment, since there could be no doubt, as to the solvency of the Government. This well-settled doctrine of the Government's exemption from the requirement of posting an appeal bond was first enunciated as early as March 7, 1916 in *Government of the Philippine Island vs. Judge of the Court of First Instance of Iloilo* and has since been so consistently enforced that it has become practically a matter of public knowledge and certainly a matter of judicial notice on the part of the courts of the land.[33]

In the subsequent case of *Badillo v. Tayag*,[34] we further discussed that:

Created by virtue of PD No. 757, the NHA is a government-owned and controlled corporation with an original charter. As a general rule, however, such corporations — with or without independent charters — are required to pay legal fees under Section 21 of Rule 141 of the 1997 Rules of Civil Procedure:

"SEC. 21. *Government Exempt.* — The Republic of the Philippines, its agencies and instrumentalities, are exempt from

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[33] *Republic v. Presiding Judge, Branch XV, Court of First Instance of Rizal, supra* note 31 at 72-75.

[34] 448 Phil. 606 (2003).

> paying the legal fees provided in this rule. Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees."

On the other hand, the NHA contends that it is exempt from paying all kinds of fees and charges, because it performs governmental functions. It cites *Public Estates Authority v. Yujuico,* which holds that the Public Estates Authority (PEA), a government-owned and controlled corporation, is exempt from paying docket fees whenever it files a suit in relation to its governmental functions.

We agree. x x x.[35]

We can infer from the foregoing jurisprudential precedents that, as a general rule, the government and all the attached agencies with no legal personality distinct from the former are exempt from posting appeal bonds, whereas government-owned and controlled corporations (GOCCs) are not similarly exempted. This distinction is brought about by the very reason of the appeal bond itself: to protect the presumptive judgment creditor against the insolvency of the presumptive judgment debtor. When the State litigates, it is not required to put up an appeal bond because it is presumed to be always solvent.[36] This exemption, however, does not, as a general rule, apply to GOCCs for the reason that the latter has a personality distinct from its shareholders. Thus, while a GOCC's majority stockholder, the State, will always be presumed solvent, the presumption does not necessarily extend to the GOCC itself. However, when a GOCC becomes a "government machinery to carry out a declared government policy,"[37] it becomes similarly situated as its majority stockholder as there is the assurance that the government will necessarily fund its primary functions. Thus, a GOCC that is sued in relation to its governmental functions may be, under appropriate circumstances, exempted from the payment of appeal fees.

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[35] *Id.* at 617.

[36] *Araneta v. Gatmaitan,* 101 Phil. 328, 340 (1957).

[37] *Republic v. Presiding Judge, Branch XV, Court of First Instance of Rizal, supra* note 31 at 72.

In the case at bar, BBC was organized as a private corporation, sequestered in the 1980's and the ownership of which was subsequently transferred to the government in a compromise agreement. Further, it is stated in its Amended Articles of Incorporation that BBC has the following primary function:

> To engage in commercial radio and television broadcasting, and for this purpose, to establish, operate and maintain such stations, both terrestrial and satellite or interplanetary, as may be necessary for broadcasting on a network wide or international basis.[38]

It is therefore crystal clear that BBC's function is purely commercial or proprietary and not governmental. As such, BBC cannot be deemed entitled to an exemption from the posting of an appeal bond.

Consequently, the NLRC did not commit an error, and much less grave abuse of discretion, in dismissing the appeal of BBC on account of non-perfection of the same. In doing so, the NLRC was merely applying Article 223 of the Labor Code, which provides:

> ART. 223. *Appeal.* — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:
>
> (a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
>
> (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
>
> (c) If made purely on questions of law; and
>
> (d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.
>
> In case of a judgment involving a monetary award, an appeal by the employer may be perfected *only upon* the posting of a cash or surety bond issued by a reputable bonding company duly accredited

[38] CA *rollo*, p. 308.

by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Italization supplied.)

The posting of the appeal bond within the period provided by law is not merely mandatory but jurisdictional. The failure on the part of BBC to perfect the appeal thus had the effect of rendering the judgment final and executory.[39]

Neither was there an interruption of the period to perfect the appeal when BBC filed (1) its Motion for the Recomputation of the Monetary Award in order to reduce the appeal bond, and (2) its Motion for Reconsideration of the denial of the same. In *Lamzon v. National Labor Relations Commission*,[40] where the petitioner argued that the NLRC gravely abused its discretion in dismissing her appeal on the ground of non-perfection despite the fact that she filed a Motion for Extension of Time to File an Appeal Bond, we held:

> The pertinent provision of Rule VI, NLRC Rules of Procedure, as amended, provides as follows:
>
> x x x x x x x x x
>
> Section 6. *Bond*. — In case the decision of a Labor Arbiter, POEA Administrator and Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.
>
> The employer as well as counsel shall submit a joint declaration under oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.
>
> The Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond. <u>The filing, however, of the motion to reduce bond shall not stop the running of the period to perfect appeal.</u>

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[39] See *Santos v. Velarde*, 450 Phil. 381, 388 (2003).

[40] 367 Phil. 169 (1999).

> Section 7. *No Extension of Period.* — No motion or request for extension of the period within which to perfect an appeal shall be allowed."

As correctly observed by the NLRC, petitioner is presumptuous in assuming that the 10-day period for perfecting an appeal, during which she was to post her appeal bond, could be easily extended by the mere filing of an appropriate motion for extension to file the bond and even without the said motion being granted. It bears emphasizing that an appeal is only a statutory privilege and it may only be exercised in the manner provided by law. Nevertheless, in certain cases, we had occasion to declare that while the rule treats the filing of a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from, as a jurisdictional requirement to perfect an appeal, the bond requirement on appeals involving monetary awards is sometimes given a liberal interpretation in line with the desired objective of resolving controversies on the merits. However, we find no cogent reason to apply this same liberal interpretation in this case. Considering that the motion for extension to file appeal bond remained unacted upon, petitioner, pursuant to the NLRC rules, should have seasonably filed the appeal bond within the ten (10) day reglementary period following receipt of the order, resolution or decision of the NLRC to forestall the finality of such order, resolution or decision. Besides, the rule mandates that no motion or request for extension of the period within which to perfect an appeal shall be allowed. The motion filed by petitioner in this case is tantamount to an extension of the period for perfecting an appeal. As payment of the appeal bond is an indispensable and jurisdictional requisite and not a mere technicality of law or procedure, we find the challenged NLRC Resolution of October 26, 1993 and Order dated January 11, 1994 in accordance with law. The appeal filed by petitioner was not perfected within the reglementary period because the appeal bond was filed out of time. Consequently, the decision sought to be reconsidered became final and executory. Unless there is a clear and patent grave abuse of discretion amounting to lack or excess of jurisdiction, the NLRC's denial of the appeal and the motion for reconsideration may not be disturbed.[41] (Underscoring supplied.)

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[41] *Id.* at 176-179. The Court in *Lamzon* quoted a provision of the 1990 NLRC Rules of Procedure, which had been effective at the time BBC filed its appeal with the NLRC in 1998. Under the 2005 NLRC Rules of Procedure, the provision reads:

In the case at bar, BBC already took a risk when it filed its Motion for the Recomputation of the Monetary Award without posting the bond itself. The Motion for the Recomputation of the Monetary Award filed by BBC, like the Motion for Extension to File the Appeal Bond in *Lamzon*, was itself tantamount to a motion for extension to perfect the appeal, which is prohibited by the rules. The NLRC already exhibited leniency when, instead of dismissing the appeal outright, it merely ordered BBC to post the required bond within 10 days from receipt of said Order, with a warning that noncompliance will cause the dismissal of the appeal for non-perfection. When BBC further demonstrated its unwillingness by completely ignoring this warning and by filing a Motion for Reconsideration on an entirely new ground, the NLRC cannot be said to have committed grave abuse of discretion by making good its warning to dismiss the appeal. Therefore, the Court of Appeals committed no error when it upheld the NLRC's dismissal of petitioner's appeal.

WHEREFORE, the instant Petition for Review on *Certiorari* is *DENIED*. The Decision of the Court of Appeals dated April 15, 2005 in CA-G.R. SP No. 57847, and its Resolution dated January 27, 2006 are hereby *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

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

Rule VI

x x x x x x x x x

SECTION 6. Bond. — x x x.

x x x x x x x x x

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award. The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

[*] Per Special Order No. 994 dated May 27, 2011.

FIRST DIVISION

[G.R. No. 171805. May 30, 2011]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **MERELO B. AZNAR; MATIAS B. AZNAR III; JOSE L. AZNAR (deceased), represented by his heirs; RAMON A. BARCENILLA; ROSARIO T. BARCENILLA; JOSE B. ENAD (deceased), represented by his heirs; and RICARDO GABUYA (deceased), represented by his heirs,** *respondents.*

[G.R. No. 172021. May 30, 2011]

MERELO B. AZNAR and MATIAS B. AZNAR III, *petitioners, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT ON THE PLEADINGS; BASED EXCLUSIVELY UPON THE ALLEGATIONS APPEARING IN THE PLEADINGS OF THE PARTIES AND THE ANNEXES, IF ANY, WITHOUT CONSIDERATION OF ANY EVIDENCE *ALIUNDE*. — The legal basis for rendering a judgment on the pleadings can be found in Section 1, Rule 34 of the Rules of Court which states that "[w]here an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x." Judgment on the pleadings is, therefore, based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without consideration of any evidence *aliunde*. However, when it appears that not all the material allegations of the complaint were admitted in the answer for some of them were either denied or disputed, and the defendant has set up certain special defenses which, if proven, would have the effect of nullifying plaintiff's main cause of action, judgment on the pleadings cannot be rendered.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; TRUSTS, DEFINED; KINDS. — Trust is the right to the beneficial

enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship that obliges the trustee to deal with the property for the benefit of the beneficiary. Trust relations between parties may either be express or implied. An express trust is created by the intention of the trustor or of the parties. An implied trust comes into being by operation of law.

3. ID.; ID.; ID.; EXPRESS TRUST; INTENTIONALLY CREATED BY THE DIRECT AND POSITIVE ACTS OF THE TRUSTOR. — Express trusts, sometimes referred to as direct trusts, are intentionally created by the direct and positive acts of the settlor or the trustor — by some writing, deed, or will or oral declaration. It is created not necessarily by some written words, but by the direct and positive acts of the parties. This is in consonance with Article 1444 of the Civil Code, which states that "[n]o particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended." In other words, the creation of an express trust must be manifested with reasonable certainty and cannot be inferred from loose and vague declarations or from ambiguous circumstances susceptible of other interpretations.

4. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; QUIETING OF TITLE; A PARTY HAS NO RIGHT TO ASK FOR THE QUIETING OF TITLE IF HE HAS NO LEGAL AND/OR EQUITABLE RIGHT OVER THE SUBJECT PROPERTY; CASE AT BAR. — [W]e find that Aznar, *et al.*, have no right to ask for the quieting of title of the properties at issue because they have no legal and/or equitable rights over the properties that are derived from the previous registered owner which is RISCO, the pertinent provision of the law is Section 2 of the Corporation Code (*Batas Pambansa Blg. 68*), which states that "[a] corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence." As a consequence thereof, a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. Thus, we had previously ruled in *Magsaysay-Labrador v. Court of Appeals* that the interest of the stockholders over the properties of the corporation is merely inchoate and therefore does not

entitle them to intervene in litigation involving corporate property x x x. In the case at bar, there is no allegation, much less any proof, that the corporate existence of RISCO has ceased and the corporate property has been liquidated and distributed to the stockholders. The records only indicate that, as per Securities and Exchange Commission (SEC) Certification dated June 18, 1997, the SEC merely suspended RISCO's Certificate of Registration beginning on September 5, 1988 due to its non-submission of SEC required reports and its failure to operate for a continuous period of at least five years. Verily, Aznar, *et al.*, who are stockholders of RISCO, cannot claim ownership over the properties at issue in this case on the strength of the Minutes which, at most, is merely evidence of a loan agreement between them and the company. There is no indication or even a suggestion that the ownership of said properties were transferred to them which would require no less that the said properties be registered under their names. For this reason, the complaint should be dismissed since Aznar, *et al.*, have no cause to seek a quieting of title over the subject properties.

5. ID.; PRESCRIPTION OF ACTIONS; AN ACTION TO ENFORCE A WRITTEN CONTRACT MUST BE BROUGHT WITHIN TEN YEARS FROM THE TIME THE RIGHT OF ACTION ACCRUES; CASE AT BAR. — At most, what Aznar, *et al.*, had was merely a right to be repaid the amount loaned to RISCO. Unfortunately, the right to seek repayment or reimbursement of their contributions used to purchase the subject properties is already barred by prescription. Section 1, Rule 9 of the Rules of Court provides that when it appears from the pleadings or the evidence on record that the action is already barred by the statute of limitations, the court shall dismiss the claim x x x. The pertinent Civil Code provision on prescription which is applicable to the issue at hand is Article 1144(1), to wit: "The following actions must be brought within ten years from the time the right of action accrues: **Upon a written contract** x x x." Moreover, in *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*, we held that the term "written contract" includes the minutes of the meeting of the board of directors of a corporation, which minutes were adopted by the parties although not signed by them x x x. Applied to the case at bar, the Minutes which was approved on March 14, 1961 is considered as a written contract between Aznar, *et al.*, and RISCO for the reimbursement of the

contributions of the former. As such, the former had a period of ten (10) years from 1961 within which to enforce the said written contract. However, it does not appear that Aznar, *et al*., filed any action for reimbursement or refund of their contributions against RISCO or even against PNB. Instead the suit that Aznar, *et al.*, brought before the trial court only on January 28, 1998 was one to quiet title over the properties purchased by RISCO with their contributions. It is unmistakable that their right of action to claim for refund or payment of their contributions had long prescribed. Thus, it was reversible error for the Court of Appeals to order PNB to pay Aznar, *et al.*, the amount of their liens based on the Minutes with legal interests from the time of PNB's acquisition of the subject properties.

APPEARANCES OF COUNSEL

Alvin C. Go for PNB.
Navarro & Associates for Merelo B. Aznar, *et al.*

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court are two petitions for review on *certiorari* under Rule 45 of the Rules of Court both seeking to annul and set aside the Decision[1] dated September 29, 2005 as well as the Resolution[2] dated March 6, 2006 of the Court of Appeals in CA-G.R. CV No. 75744, entitled "*Merelo B. Aznar, Matias B. Aznar III, Jose L. Aznar (deceased) represented by his heirs, Ramon A. Barcenilla (deceased) represented by his heirs, Rosario T. Barcenilla, Jose B. Enad (deceased) represented by his heirs, and Ricardo Gabuya (deceased) represented by his heirs v. Philippine National Bank, Jose Garrido and Register of Deeds of Cebu City.*" The September 29, 2005 Decision of

[1] *Rollo* (G.R. No. 171805), pp. 75-88; penned by Associate Justice Arsenio J. Magpale with Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr., concurring.

[2] *Id.* at 90-91.

the Court of Appeals set aside the Decision[3] dated November 18, 1998 of the Regional Trial Court (RTC) of Cebu City, Branch 17, in Civil Case No. CEB-21511. Furthermore, it ordered the Philippine National Bank (PNB) to pay Merelo B. Aznar; Matias B. Aznar III; Jose L. Aznar (deceased), represented by his heirs; Ramon A. Barcenilla (deceased), represented by his heirs; Rosario T. Barcenilla; Jose B. Enad (deceased), represented by his heirs; and Ricardo Gabuya (deceased), represented by his heirs (Aznar, *et al.*), the amount of their lien based on the Minutes of the Special Meeting of the Board of Directors[4] (Minutes) of the defunct Rural Insurance and Surety Company, Inc. (RISCO) duly annotated on the titles of three parcels of land, plus legal interests from the time of PNB's acquisition of the subject properties until the finality of the judgment but dismissing all other claims of Aznar, *et al.* On the other hand, the March 6, 2006 Resolution of the Court of Appeals denied the Motion for Reconsideration subsequently filed by each party.

The facts of this case, as stated in the Decision dated September 29, 2005 of the Court of Appeals, are as follows:

> In 1958, RISCO ceased operation due to business reverses. In plaintiffs' desire to rehabilitate RISCO, they contributed a total amount of **₱212,720.00** which was used in the purchase of the three (3) parcels of land described as follows:
>
> > "A parcel of land (Lot No. 3597 of the Talisay-Minglanilla Estate, G.L.R.O. Record No. 3732) situated in the Municipality of Talisay, Province of Cebu, Island of Cebu. xxx containing an area of SEVENTY[-]EIGHT THOUSAND ONE HUNDRED EIGHTY[-]FIVE SQUARE METERS (78,185) more or less. x x x" covered by Transfer Certificate of Title No. 8921 in the name of Rural Insurance & Surety Co., Inc.";
> >
> > "A parcel of land (Lot 7380 of the Talisay Minglanilla Estate, G.L.R.O. Record No. 3732), situated in the Municipality of Talisay, Province of Cebu, Island of Cebu. x x x containing an area of THREE HUNDRED TWENTY[-]NINE THOUSAND

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[3] *Id.* at 157-166.

[4] *Id.* at 128-130.

FIVE HUNDRED FORTY[-]SEVEN SQUARE METERS (329,547), more or less. x x x" covered by Transfer Certificate of Title No. 8922 in the name of Rural Insurance & Surety Co., Inc." and

"A parcel of land (Lot 1323 of the subdivision plan Psd-No. 5988), situated in the District of Lahug, City of Cebu, Island of Cebu. x x x containing an area of FIFTY[-]FIVE THOUSAND SIX HUNDRED FIFTY[-]THREE (55,653) SQUARE METERS, more or less." covered by Transfer Certificate of Title No. 24576 in the name of Rural Insurance & Surety Co., Inc."

After the purchase of the above lots, titles were issued in the name of RISCO. The amount contributed by plaintiffs constituted as liens and encumbrances on the aforementioned properties as annotated in the titles of said lots. Such annotation was made pursuant to the **Minutes of the Special Meeting of the Board of Directors of RISCO** (hereinafter referred to as the "Minutes") on March 14, 1961, pertinent portion of which states:

x x x x x x x x x

3. The President then explained that in a special meeting of the stockholders previously called for the purpose of putting up certain amount of ₱212,720.00 for the rehabilitation of the Company, the following stockholders contributed the amounts indicated opposite their names:

CONTRIBUTED SURPLUS

MERELO B. AZNAR	₱50,000.00
MATIAS B. AZNAR	50,000.00
JOSE L. AZNAR	27,720.00
RAMON A. BARCENILLA	25,000.00
ROSARIO T. BARCENILLA	25,000.00
JOSE B. ENAD	17,500.00
RICARDO GABUYA	17,500.00
	212,720.00

x x x x x x x x x

And that the respective contributions above-mentioned shall constitute as their **lien or interest** on the property described above, if and when said property are titled in the name of RURAL INSURANCE & SURETY CO., INC., subject to

registration as their adverse claim in pursuance of the Provisions of Land Registration Act, (Act No. 496, as amended) until such time their respective contributions are refunded to them completely.

x x x x x x x x x"

Thereafter, various subsequent annotations were made on the same titles, including the Notice of Attachment and Writ of Execution both dated August 3, 1962 in favor of herein defendant PNB, to wit:

On TCT No. 8921 for Lot 3597:

Entry No. 7416-V-4-D.B. – Notice of Attachment – By the Provincial Sheriff of Cebu, Civil Case No. 47725, Court of First Instance of Manila, entitled "*Philippine National Bank, Plaintiff, versus Iluminada Gonzales, et al., Defendants,*" attaching all rights, interest and participation of the defendant Iluminada Gonzales and Rural Insurance & Surety Co., Inc. of the two parcels of land covered by T.C.T. Nos. 8921, Attachment No. 330 and 185.

Date of Instrument – August 3, 1962.
Date of Inscription – August 3, 1962, 3:00 P.M.

Entry No. 7417-V-4-D.B. – Writ of Execution – By the Court of First Instance of Manila, commanding the Provincial Sheriff of Cebu, of the lands and buildings of the defendants, to make the sum of Seventy[-]One Thousand Three Hundred Pesos (₱71,300.00) plus interest *etc*., in connection with Civil Case No. 47725, File No. T-8021.

Date of Instrument – July 21, 1962.
Date of Inscription – August 3, 1962, 3:00 P.M.

Entry No. 7512-V-4-D.B. – Notice of Attachment – By the Provincial Sheriff of Cebu, Civil Case Nos. IV-74065, 73929, 74129, 72818, in the Municipal Court of the City of Manila, entitled "*Jose Garrido, Plaintiff, versus Rural Insurance & Surety Co., Inc., et als., Defendants,*" attaching all rights, interests and participation of the defendants, to the parcels of land covered by T.C.T. Nos. 8921 & 8922 Attachment No. 186, File No. T-8921.

Date of the Instrument – August 16, 1962.
Date of Inscription – August 16, 1962, 2:50 P.M.

Entry No. 7513-V-4-D.B. – Writ of Execution – By the Municipal Court of the City of Manila, commanding the Provincial Sheriff of Cebu, of the lands and buildings of the defendants, to make the sum of Three Thousand Pesos (₱3,000.00), with interest at 12% per annum from July 20, 1959, in connection with Civil Case Nos. IV-74065, 73929, 74613 annotated above.

File No. T-8921
Date of the Instrument – August 11, 1962.
Date of the Inscription – August 16, 1962, 2:50 P.M.

On TCT No. 8922 for Lot 7380:
(Same as the annotations on TCT 8921)

On TCT No. 24576 for Lot 1328 (Corrected to Lot 1323-c per court order):

Entry No. 1660-V-7-D.B. – Notice of Attachment – by the Provincial Sheriff of Cebu, Civil Case No. 47725, Court of First Instance of Manila, entitled "*Philippine National Bank, Plaintiff, versus, Iluminada Gonzales, et al., Defendants*", attaching all rights, interest, and participation of the defendants Iluminada Gonzales and Rural Insurance & Surety Co., Inc. of the parcel of land herein described.
Attachment No. 330 & 185.
Date of Instrument – August 3, 1962.
Date of Inscription – August 3, 1962, 3:00 P.M.

Entry No. 1661-V-7-D.B. – Writ of Execution by the Court of First Instance of Manila commanding the Provincial Sheriff of Cebu, of the lands and buildings of the defendants to make the sum of Seventy[-]One Thousand Three Hundred Pesos (₱71,300.00), plus interest, *etc.*, in connection with Civil Case No. 47725.
File No. T-8921.
Date of the Instrument – July 21, 1962.
Date of the Inscription – August 3, 1962 3:00 P.M.

Entry No. 1861-V-7-D.B. – Notice of Attachment – By the Provincial Sheriff of Cebu, Civil Case Nos. IV-74065, 73929, 74129, 72613 & 72871, in the Municipal Court of the City of Manila, entitled "*Jose Garrido, Plaintiff, versus Rural Insurance & Surety Co., Inc., et als., Defendants*," attaching all rights,

interest and participation of the defendants, to the parcel of land herein described.
Attachment No. 186.
File No. T-8921.
Date of the Instrument – August 16, 1962.
Date of the Instription – August 16, 1962 2:50 P.M.

Entry No. 1862-V-7-D.B. – Writ of Execution – by the Municipal Court of Manila, commanding the Provincial Sheriff of Cebu, of the lands and buildings of the Defendants, to make the sum of Three Thousand Pesos (₱3,000.00), with interest at 12% per annum from July 20, 1959, in connection with Civil Case Nos. IV-74065, 73929, 74129, 72613 & 72871 annotated above.
File No. T-8921.
Date of the Instrument – August 11, 1962.
Date of the Inscription – August 16, 1962 at 2:50 P.M.

As a result, a Certificate of Sale was issued in favor of Philippine National Bank, being the lone and highest bidder of the three (3) parcels of land known as Lot Nos. 3597 and 7380, covered by T.C.T. Nos. 8921 and 8922, respectively, both situated at Talisay, Cebu, and Lot No. 1328-C covered by T.C.T. No. 24576 situated at Cebu City, for the amount of Thirty-One Thousand Four Hundred Thirty Pesos (₱31,430.00). Thereafter, a Final Deed of Sale dated May 27, 1991 in favor of the Philippine National Bank was also issued and Transfer Certificate of Title No. 24576 for Lot 1328-C (corrected to 1323-C) was cancelled and a new certificate of title, TCT 119848 was issued in the name of PNB on August 26, 1991.

This prompted plaintiffs-appellees to file the instant complaint seeking the quieting of their supposed title to the subject properties, declaratory relief, cancellation of TCT and reconveyance with temporary restraining order and preliminary injunction. Plaintiffs alleged that the subsequent annotations on the titles are subject to the prior annotation of their liens and encumbrances. Plaintiffs further contended that the subsequent writs and processes annotated on the titles are all null and void for want of valid service upon RISCO and on them, as stockholders. They argued that the Final Deed of Sale and TCT No. 119848 are null and void as these were issued only after 28 years and that any right which PNB may have over the properties had long become stale.

Defendant PNB on the other hand countered that plaintiffs have no right of action for quieting of title since the order of the court directing the issuance of titles to PNB had already become final and executory and their validity cannot be attacked except in a direct proceeding for their annulment. Defendant further asserted that plaintiffs, as mere stockholders of RISCO do not have any legal or equitable right over the properties of the corporation. PNB posited that even if plaintiff's monetary lien had not expired, their only recourse was to require the reimbursement or refund of their contribution.[5]

Aznar, *et al.*, filed a Manifestation and Motion for Judgment on the Pleadings[6] on October 5, 1998. Thus, the trial court rendered the November 18, 1998 Decision, which ruled against PNB on the basis that there was an express trust created over the subject properties whereby RISCO was the trustee and the stockholders, Aznar, *et al.*, were the beneficiaries or the *cestui que trust*. The dispositive portion of the said ruling reads:

WHEREFORE, judgment is hereby rendered as follows:

a) Declaring the Minutes of the Special Meeting of the Board of Directors of RISCO approved on March 14, 1961 (Annex "E," Complaint) annotated on the titles to subject properties on May 15, 1962 as an express trust whereby RISCO was a mere trustee and the above-mentioned stockholders as beneficiaries being the true and lawful owners of Lots 3597, 7380 and 1323;

b) Declaring all the subsequent annotations of court writs and processes, to wit: Entry No. 7416-V-4-D.B., 7417-V-4-D.B., 7512-V-4-D.B., and 7513-V-4-D.B. in TCT No. 8921 for Lot 3597 and TCT No. 8922 for Lot 7380; Entry No. 1660-V-7-D.B., Entry No. 1661-V-7-D.B., Entry No. 1861-V-7-D.B., Entry No. 1862-V-7-D.B., Entry No. 4329-V-7-D.B., Entry No. 3761-V-7-D.B. and Entry No. 26522-V-34, D.B. on TCT No. 24576 for Lot 1323-C, and all other subsequent annotations thereon in favor of third persons, as null and void;

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[5] *Id.* at 76-80.

[6] *Id.* at 131-134.

c) Directing the Register of Deeds of the Province of Cebu and/or the Register of Deeds of Cebu City, as the case may be, to cancel all these annotations mentioned in paragraph b) above the titles;

d) Directing the Register of Deeds of the Province of Cebu to cancel and/or annul TCTs Nos. 8921 and 8922 in the name of RISCO, and to issue another titles in the names of the plaintiffs; and

e) Directing Philippine National Bank to reconvey TCT No. 119848 in favor of the plaintiffs.[7]

PNB appealed the adverse ruling to the Court of Appeals which, in its September 29, 2005 Decision, set aside the judgment of the trial court. Although the Court of Appeals agreed with the trial court that a judgment on the pleadings was proper, the appellate court opined that the monetary contributions made by Aznar, *et al.*, to RISCO can only be characterized as a loan secured by a lien on the subject lots, rather than an express trust. Thus, it directed PNB to pay Aznar, *et al.*, the amount of their contributions plus legal interest from the time of acquisition of the property until finality of judgment. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the assailed Judgment is hereby SET ASIDE.

A new judgment is rendered ordering Philippine National Bank to pay plaintiffs-appellees the amount of their lien based on the *Minutes of the Special Meeting of the Board of Directors* duly annotated on the titles, plus legal interests from the time of appellants' acquisition of the subject properties until the finality of this judgment.

All other claims of the plaintiffs-appellees are hereby DISMISSED.[8]

Both parties moved for reconsideration but these were denied by the Court of Appeals. Hence, each party filed with this Court their respective petitions for review on *certiorari* under Rule

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[7] *Id.* at 165-166.

[8] *Id.* at 87.

45 of the Rules of Court, which were consolidated in a Resolution[9] dated October 2, 2006.

In PNB's petition, docketed as G.R. No. 171805, the following assignment of errors were raised:

I

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDINGS OF THE TRIAL COURT THAT A JUDGMENT ON THE PLEADINGS WAS WARRANTED DESPITE THE EXISTENCE OF GENUINE ISSUES OF FACTS ALLEGED IN PETITIONER PNB'S ANSWER.

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RIGHT OF RESPONDENTS TO REFUND OR REPAYMENT OF THEIR CONTRIBUTIONS HAD NOT PRESCRIBED AND/OR THAT THE MINUTES OF THE SPECIAL MEETING OF THE BOARD OF DIRECTORS OF RISCO CONSTITUTED AS AN EFFECTIVE ADVERSE CLAIM.

III

THE COURT OF APPEALS ERRED IN NOT CONSIDERING THE DISMISSAL OF THE COMPLAINT ON GROUNDS OF *RES JUDICATA* AND LACK OF CAUSE OF ACTION ALLEGED BY PETITIONER IN ITS ANSWER.[10]

On the other hand, Aznar, *et al.*'s petition, docketed as G.R. No. 172021, raised the following issue:

THE COURT OF APPEALS ERRED IN CONCLUDING THAT THE CONTRIBUTIONS MADE BY THE STOCKHOLDERS OF RISCO WERE MERELY A LOAN SECURED BY THEIR LIEN OVER THE PROPERTIES, SUBJECT TO REIMBURSEMENT OR REFUND, RATHER THAN AN EXPRESS TRUST.[11]

Anent the first issue raised in G.R. No. 171805, PNB argues that a judgment on the pleadings was not proper because its

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[9] *Id.* at 299.

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

[11] *Rollo* (G.R. No. 172021), p. 19.

Answer,[12] which it filed during the trial court proceedings of this case, tendered genuine issues of fact since it did not only deny material allegations in Aznar, *et al.*'s Complaint[13] but also set up special and affirmative defenses. Furthermore, PNB maintains that, by virtue of the trial court's judgment on the pleadings, it was denied its right to present evidence and, therefore, it was denied due process.

The contention is meritorious.

The legal basis for rendering a judgment on the pleadings can be found in Section 1, Rule 34 of the Rules of Court which states that "[w]here an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x."

Judgment on the pleadings is, therefore, based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without consideration of any evidence *aliunde*.[14] However, when it appears that not all the material allegations of the complaint were admitted in the answer for some of them were either denied or disputed, and the defendant has set up certain special defenses which, if proven, would have the effect of nullifying plaintiff's main cause of action, judgment on the pleadings cannot be rendered.[15]

In the case at bar, the Court of Appeals justified the trial court's resort to a judgment on the pleadings in the following manner:

> Perusal of the complaint, particularly, Paragraph 7 thereof reveals:
>
> "7. That in their desire to rehabilitate RISCO, the above-named stockholders contributed a total amount of Php212,720.00

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[12] *Rollo* (G.R. No. 171805), pp. 120-127.

[13] *Id.* at 92-119.

[14] *Pacific Rehouse Corporation v. EIB Securities, Inc.*, G.R. No. 184036, October 13, 2010.

[15] *Municipality of Tiwi v. Betito*, G.R. No. 171873, July 9, 2010, 624 SCRA 623, 638.

> which was used in the purchase of the above-described parcels of land, which amount constituted liens and encumbrances on subject properties in favor of the above-named stockholders as annotated in the titles adverted to above, pursuant to the Minutes of the Special Meeting of the Board of Directors of RISCO approved on March 14, 1961, a copy of which is hereto attached as Annex "E".

On the other hand, defendant in its Answer, admitted the aforequoted allegation with the qualification that the amount put up by the stockholders was "used as part payment" for the properties. Defendant further averred that plaintiff's liens and encumbrances annotated on the titles issued to RISCO constituted as "loan from the stockholders to pay part of the purchase price of the properties" and "was a personal obligation of RISCO and was thus not a claim adverse to the ownership rights of the corporation." With these averments, We do not find error on the part of the trial court in rendering a judgment on the pleadings. For one, the qualification made by defendant in its answer is not sufficient to controvert the allegations raised in the complaint. As to defendants' contention that the money contributed by plaintiffs was in fact a "loan" from the stockholders, reference can be made to the Minutes of the Special Meeting of the Board of Directors, from which plaintiffs-appellees anchored their complaint, in order to ascertain the true nature of their claim over the properties. Thus, the issues raised by the parties can be resolved on the basis of their respective pleadings and the annexes attached thereto and do not require further presentation of evidence *aliunde*.[16]

However, a careful reading of Aznar, *et al.*'s Complaint and of PNB's Answer would reveal that both parties raised several claims and defenses, respectively, other than what was cited by the Court of Appeals, which requires the presentation of evidence for resolution, to wit:

Complaint (Aznar, *et al.*)	Answer (PNB)
11. That these subsequent annotations on the titles of the properties in question are subject	10) Par. 11 is denied as the loan from the stockholders to pay part of the purchase price of the

[16] *Rollo* (G.R. No. 171805), pp. 82-83.

to the prior annotation of liens and encumbrances of the above-named stockholders per Entry No. 458-V-7-D.B. inscribed on TCT No. 24576 on May 15, 1962 and per Entry No. 6966-V-4-D.B. on TCT No. 8921 and TCT No. 8922 on May 15, 1962;	properties was a personal obligation of RISCO and was thus not a claim adverse to the ownership rights of the corporation;
12. That these writs and processes annotated on the titles are all null and void for total want of valid service upon RISCO and the above-named stockholders considering that as early as sometime in 1958, RISCO ceased operations as earlier stated, and as early as May 15, 1962, the liens and encumbrances of the above-named stockholders were annotated in the titles of subject properties;	11) Par. 12 is denied as in fact notice to RISCO had been sent to its last known address at Plaza Goite, Manila;
13. That more particularly, the Final Deed of Sale (Annex "G") and TCT No. 119848 are null and void as these were issued only after 28 years and 5 months (in the case of the Final Deed of Sale) and 28 years, 6 months and 29 days (in the case of TCT 119848) from the invalid auction sale on December 27, 1962, hence, any right, if any, which PNB had over subject properties had long become stale;	12) Par. 13 is denied for no law requires the final deed of sale to be executed immediately after the end of the redemption period. Moreover, another court of competent jurisdiction has already ruled that PNB was entitled to a final deed of sale;
14. That plaintiffs continue to have possession of subject properties and of their corresponding titles, but they never received any process	13) Par. 14 is denied as plaintiffs are not in actual possession of the land and if they were, their possession was as trustee for the creditors of RISCO like PNB;

concerning the petition filed by PNB to have TCT 24576 over Lot 1323-C surrendered and/or cancelled;	
15. That there is a cloud created on the aforementioned titles of RISCO by reason of the annotate writs, processes and proceedings caused by Jose Garrido and PNB which were apparently valid or effective, but which are in truth and in fact invalid and ineffective, and prejudicial to said titles and to the rights of the plaintiffs, which should be removed and the titles quieted.[17]	14) Par. 15 is denied as the court orders directing the issuance of titles to PNB in lieu of TCT 24576 and TCT 8922 are valid judgments which cannot be set aside in a collateral proceeding like the instant case.[18]

Furthermore, apart from refuting the aforecited material allegations made by Aznar, *et al.*, PNB also indicated in its Answer the special and affirmative defenses of (a) prescription; (b) *res judicata*; (c) Aznar, *et al.*, having no right of action for quieting of title; (d) Aznar, *et al.*'s lien being ineffective and not binding to PNB; and (e) Aznar, *et al.*'s having no personality to file the suit.[19]

From the foregoing, it is indubitably clear that it was error for the trial court to render a judgment on the pleadings and, in effect, resulted in a denial of due process on the part of PNB because it was denied its right to present evidence. A remand of this case would ordinarily be the appropriate course of action. However, in the interest of justice and in order to expedite the resolution of this case which was filed with the trial court way back in 1998, the Court finds it proper to already resolve the present controversy in light of the existence of legal grounds that would dispose of the case at bar without necessity of

[17] *Id.* at 100-102.

[18] *Id.* at 122.

[19] *Id.* at 123-126.

presentation of further evidence on the other disputed factual claims and defenses of the parties.

A thorough and comprehensive scrutiny of the records would reveal that this case should be dismissed because Aznar, *et al.*, have no title to quiet over the subject properties and their true cause of action is already barred by prescription.

At the outset, the Court agrees with the Court of Appeals that the agreement contained in the Minutes of the Special Meeting of the RISCO Board of Directors held on March 14, 1961 was a loan by the therein named stockholders to RISCO. We quote with approval the following discussion from the Court of Appeals Decision dated September 29, 2005:

> Careful perusal of the Minutes relied upon by plaintiffs-appellees in their claim, showed that their contributions shall constitute as "lien or interest on the property" if and when said properties are titled in the name of RISCO, subject to registration of their adverse claim under the Land Registration Act, until such time their respective contributions are refunded to them completely.
>
> It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. When the language of the contract is explicit leaving no doubt as to the intention of the drafters thereof, the courts may not read into it any other intention that would contradict its plain import.
>
> The term **lien** as used in the Minutes is defined as *"a discharge on property usually for the payment of some debt or obligation. A lien is a qualified right or a proprietary interest which may be exercised over the property of another. It is a right which the law gives to have a debt satisfied out of a particular thing. It signifies a legal claim or charge on property; whether real or personal, as a* ***collateral or security*** *for the payment of some debt or obligation.*" Hence, from the use of the word "lien" in the Minutes, We find that the money contributed by plaintiffs-appellees was in the nature of a loan, secured by their liens and interests duly annotated on the titles. The annotation of their lien serves only as collateral and does not in any way vest ownership of property to plaintiffs.[20] (Emphases supplied.)

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[20] *Id.* at 84-85.

We are not persuaded by the contention of *Aznar, et al.*, that the language of the subject Minutes created an express trust.

Trust is the right to the beneficial enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship that obliges the trustee to deal with the property for the benefit of the beneficiary. Trust relations between parties may either be express or implied. An express trust is created by the intention of the trustor or of the parties. An implied trust comes into being by operation of law.[21]

Express trusts, sometimes referred to as direct trusts, are intentionally created by the direct and positive acts of the settlor or the trustor — by some writing, deed, or will or oral declaration. It is created not necessarily by some written words, but by the direct and positive acts of the parties.[22] This is in consonance with Article 1444 of the Civil Code, which states that "[n]o particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended."

In other words, the creation of an express trust must be manifested with reasonable certainty and cannot be inferred from loose and vague declarations or from ambiguous circumstances susceptible of other interpretations.[23]

No such reasonable certitude in the creation of an express trust obtains in the case at bar. In fact, a careful scrutiny of the plain and ordinary meaning of the terms used in the Minutes does not offer any indication that the parties thereto intended that Aznar, *et al.*, become beneficiaries under an express trust and that RISCO serve as trustor.

Indeed, we find that Aznar, *et al.*, have no right to ask for the quieting of title of the properties at issue because they have no legal and/or equitable rights over the properties that are derived

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[21] *Heirs of Tranquilino Labiste v. Heirs of Jose Labiste*, G.R. No. 162033, May 8, 2009, 587 SCRA 417, 425.

[22] *Ringor v. Ringor*, 480 Phil. 141, 158 (2004).

[23] *Heirs of Pedro Medina v. Court of Appeals*, 196 Phil. 205, 213-214 (1981).

from the previous registered owner which is RISCO, the pertinent provision of the law is Section 2 of the Corporation Code (*Batas Pambansa Blg. 68*), which states that "[a] corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence."

As a consequence thereof, a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected.[24] Thus, we had previously ruled in *Magsaysay-Labrador v. Court of Appeals*[25] that the interest of the stockholders over the properties of the corporation is merely inchoate and therefore does not entitle them to intervene in litigation involving corporate property, to wit:

> Here, the interest, if it exists at all, of petitioners-movants is indirect, contingent, remote, conjectural, consequential and collateral. At the very least, their interest is purely inchoate, or in sheer expectancy of a right in the management of the corporation and to share in the profits thereof and in the properties and assets thereof on dissolution, after payment of the corporate debts and obligations.
>
> While a share of stock represents a proportionate or aliquot interest in the property of the corporation, it does not vest the owner thereof with any legal right or title to any of the property, his interest in the corporate property being equitable or beneficial in nature. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person.[26]

In the case at bar, there is no allegation, much less any proof, that the corporate existence of RISCO has ceased and the corporate property has been liquidated and distributed to the stockholders. The records only indicate that, as per Securities

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[24] *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*, G.R. Nos. 170689 & 170705, March 17, 2009, 581 SCRA 598, 612.

[25] 259 Phil. 748 (1989).

[26] *Id.* at 754.

and Exchange Commission (SEC) Certification[27] dated June 18, 1997, the SEC merely suspended RISCO's Certificate of Registration beginning on September 5, 1988 due to its non-submission of SEC required reports and its failure to operate for a continuous period of at least five years.

Verily, Aznar, *et al.*, who are stockholders of RISCO, cannot claim ownership over the properties at issue in this case on the strength of the Minutes which, at most, is merely evidence of a loan agreement between them and the company. There is no indication or even a suggestion that the ownership of said properties were transferred to them which would require no less that the said properties be registered under their names. For this reason, the complaint should be dismissed since Aznar, *et al.*, have no cause to seek a quieting of title over the subject properties.

At most, what Aznar, *et al.*, had was merely a right to be repaid the amount loaned to RISCO. Unfortunately, the right to seek repayment or reimbursement of their contributions used to purchase the subject properties is already barred by prescription.

Section 1, Rule 9 of the Rules of Court provides that when it appears from the pleadings or the evidence on record that the action is already barred by the statute of limitations, the court shall dismiss the claim, to wit:

> Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or **by statute of limitations**, the court shall dismiss the claim. (Emphasis supplied.)

In *Feliciano v. Canoza*,[28] we held:

> We have ruled that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties'

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[27] *Rollo* (G.R. No. 171805), p. 113.

[28] G.R. No. 161746, September 1, 2010, 629 SCRA 550, citing *Gicano v. Gegato*, 241 Phil. 139, 145 (1988).

pleadings or other facts on record show it to be indeed time-barred x x x; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. **What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiffs complaint, or otherwise established by the evidence**.[29] (Emphasis supplied.)

The pertinent Civil Code provision on prescription which is applicable to the issue at hand is Article 1144(1), to wit:

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

1. **Upon a written contract**;
2. Upon an obligation created by law;
3. Upon a judgment. (Emphasis supplied.)

Moreover, in *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*,[30] we held that the term "written contract" includes the minutes of the meeting of the board of directors of a corporation, which minutes were adopted by the parties although not signed by them, to wit:

Coming now to the question of prescription raised by defendant Lepanto, it is contended by the latter that the period to be considered for the prescription of the claim regarding participation in the profits is only four years, because the modification of the sharing embodied in the management contract is merely verbal, no written document to that effect having been presented. This contention is untenable. The modification appears in the minutes of the special meeting of the Board of Directors of Lepanto held on August 21, 1940, it having been made upon the authority of its President, and in said minutes the terms of modification had been specified. This is sufficient to have the agreement considered, for the purpose of applying the statute

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[29] *Id.* at 558-559.

[30] 125 Phil. 204 (1966).

of limitations, as a written contract even if the minutes were not signed by the parties (3 A.L.R., 2d, p. 831). It has been held that a writing containing the terms of a contract if adopted by two persons may constitute a contract in writing even if the same is not signed by either of the parties (3 A.L.R., 2d, pp. 812-813). Another authority says that an unsigned agreement the terms of which are embodied in a document unconditionally accepted by both parties is a written contract (Corbin on Contracts, Vol. I, p. 85).[31]

Applied to the case at bar, the Minutes which was approved on March 14, 1961 is considered as a written contract between Aznar, *et al*., and RISCO for the reimbursement of the contributions of the former. As such, the former had a period of ten (10) years from 1961 within which to enforce the said written contract. However, it does not appear that Aznar, *et al*., filed any action for reimbursement or refund of their contributions against RISCO or even against PNB. Instead the suit that Aznar, *et al.*, brought before the trial court only on January 28, 1998 was one to quiet title over the properties purchased by RISCO with their contributions. It is unmistakable that their right of action to claim for refund or payment of their contributions had long prescribed. Thus, it was reversible error for the Court of Appeals to order PNB to pay Aznar, *et al.*, the amount of their liens based on the Minutes with legal interests from the time of PNB's acquisition of the subject properties.

In view of the foregoing, it is unnecessary for the Court to pass upon the other issues raised by the parties.

WHEREFORE, the petition of Aznar, *et al.*, in G.R. No. 172021 is *DENIED* for lack of merit. The petition of PNB in G.R. No. 171805 is *GRANTED*. The Complaint, docketed as Civil Case No. CEB-21511, filed by Aznar, *et al.*, is hereby *DISMISSED*. No costs.

SO ORDERED.

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

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[31] *Id.* at 223-224.

[*] Per Special Order No. 994 dated May 27, 2011.

SECOND DIVISION

[G.R. No. 174660. May 30, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICKY LADIANA *y* DAVAO, (at-large),** *accused.* **ANTONIO MANUEL UY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS. — Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property belongs to another; (3) the taking is *animo lucrandi* or with intent to gain; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed. A conviction needs certainty that the robbery is the central purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life, but the killing may occur before, during or after the robbery.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANCIAL EVIDENCE; ELEMENTS. — While there was no direct evidence to establish appellant's participation in the commission of the crime, direct evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community. Thus, Section 4, Rule 133 of the Revised Rules of Court on circumstantial evidence requires the concurrence of the following: (1) there must be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination

of all circumstances is such as to produce a conviction beyond reasonable doubt of the guilt of the accused. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.

3. ID.; ID.; ADMISSIBILITY OF EVIDENCE; TESTIMONIAL EVIDENCE; ADMISSIONS AND CONFESSIONS; THE DECLARATION OF AN ACCUSED ACKNOWLEDGING HIS GUILT OF THE OFFENSE CHARGED, OR OF ANY OFFENSE NECESSARILY INCLUDED THEREIN, MAY BE GIVEN IN EVIDENCE AGAINST HIM. — Appellant's confession to Eduardo, who is not a police officer, is admissible in evidence. The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him. Appellant's admissions are not covered by Sections 12 (1) and (3) of Article III of the Constitution, because they were not extracted while he was under custodial investigation. The rule is that any person, otherwise competent as a witness, who heard the confession, is competent to testify as to the substance of what he heard and understood all of it. An oral confession need not be repeated verbatim, but in such case it must be given in its substance.

4. CRIMINAL LAW; ROBBERY WITH HOMICIDE; CRIMINAL LIABILITY, EXPLAINED. — [C]ase law has it that whenever homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same. There was no showing that appellant attempted to prevent the killing.

5. REMEDIAL LAW; EVIDENCE; ALIBI; MUST MEET STRICTLY THE REQUIREMENTS OF TIME AND PLACE TO PROSPER AS A DEFENSE. — To prosper, alibi must meet strictly the requirements of time and place, meaning that the accused was not at the scene of the crime at the time it was committed, and that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.

6. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; AGGRAVATING CIRCUMSTANCES MUST BE SPECIFICALLY ALLEGED THEREIN TO BE CONSIDERED AGAINST THE ACCUSED. — The CA correctly modified the penalty imposed by the RTC. We agree with the CA that the RTC erred in appreciating the aggravating circumstances of nocturnity and treachery when they were not specifically alleged in the information. Sections 8 and 9 of Rule 110 of the 2000 Revised Rules on Criminal Procedure, which became effective on December 1, 2000, provides that aggravating circumstances must be alleged in the information, otherwise, they cannot be considered against the accused even if they are proven during the trial.

7. CRIMINAL LAW; ROBBERY WITH HOMICIDE; PENALTY. — The special complex crime of robbery with homicide is punishable under Article 294, as amended by Republic Act No. 7659 of the Revised Penal Code, as amended, by *reclusion perpetua* to death. Article 63 of the Revised Penal Code, as amended, states that when the law prescribes a penalty consisting of two (2) indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed. Considering that there was no modifying circumstance which attended the commission of the crime, the CA correctly modified the penalty to *reclusion perpetua*.

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR. — In robbery with homicide, civil indemnity and moral damages in the amount of ₱50,000.00 each is granted automatically in the absence of any qualifying aggravating circumstances. These awards are mandatory without need of allegation and evidence other than the death of the victim owing to the fact of the commission of the crime. In this case, the RTC, as affirmed by the CA, properly awarded the amount of ₱50,000.00 as civil indemnity. The heirs of the victims are also entitled to the award of moral damages in the amount of ₱50,000.00 each. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before us is an appeal from the Decision[1] dated July 18, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00110 affirming with modification the Decision[2] of the Regional Trial Court (RTC), Branch 114, Pasay City, finding appellant Antonio Manuel Uy guilty beyond reasonable doubt of the crime of Robbery with Homicide.

In an Information[3] dated July 16, 2001, appellant, together with a co-accused merely identified as John Doe, was charged with the crime of Robbery with Homicide which reads:

That on or about the 27th day of June 2001, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Antonio Manuel Uy *y* Suangan and John Doe, conspiring and confederating together and mutually helping one another, with intent to gain, by means of force and intimidation, did then and there willfully, unlawfully and feloniously take and carry away the following jewelry, to wit:

QTY	DESCRIPTION	AMOUNT
3	Star ruby brooch 7 x 9 mm	₱1,920.00
5	Star ruby pendant plain 8 x 10 mm	825.00
4	Star ruby pendant plain 10 x 14 mm	1,220.00
6	Star ruby pendant w/ zircon 12 x 16 mm	4,170.00
2	Star ruby pendant w/ zircon 10 x 14 mm	1,730.00

[1] Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Bienvenido L. Reyes and Regalado E. Maambong, concurring; CA *rollo*, pp. 198-222.

[2] CA *rollo*, pp. 54-67.

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

4	Star ruby pendant plain	3,020.00
3	Star ruby bracelet 12 x 16 mm	4,500.00
3	Star ruby bracelet w/ zircon 8 x 10 mm	2,025.00
2	Star ruby bracelet w/ zircon 6 x 8 mm	1,050.00
7	Star ruby bracelet plain 8 x 10 mm	4,375.00
2	Star ruby ring w/ zircon medium stone	1,760.00
2	Star ruby ring w/ zircon 10 x 12 mm	1,510.00
2	Star ruby ring w/ zircon large stone	2,010.00
1	Star ruby ring plain 10 x 15 mm	905.00
1	Star ruby ring plain 9 x 11 mm	680.00
9	Star ruby ring plain 10 x 14 mm	7,110.00
6	Star ruby ring plain yg	4,350.00
1	Star ruby ring plain wg	685.00
5	Star ruby ring plain 11 x 15 mm	5,200.00
8	Star ruby ring plain 10 x 12 mm	2,320.00
7	Star ruby ring plain 12 x 16 mm	2,800.00
1	Star ruby ring plain 8 x 10 mm	165.00
6	Star ruby pendant small stone	4,140.00
1	Star sapphire earring pierced 10 x 12 mm	830.00
3	Star sapphire brooch 6 x 8 mm	1,965.00
26	Star sapphire tie tack 8 x 10 mm	4,180.00
1	Star sapphire tie tack & cufflinks set 6 x 8 mm	525.00
1	Star sapphire pendant 12 x 16 mm	390.00
1	Star sapphire earring pierced 6 x 8 mm	165.00
1	Star sapphire earring plain 6 x 8 mm	445.00
1	Star sapphire bracelet	360.00
11	Star sapphire tie pin wg 8 x 10 mm	2,090.00
3	Star sapphire tie tack & cufflinks set	1,380.00
3	Star sapphire tie tack & cufflinks set	2,745.00
1	Emerald ring	1,260.00
1	Diamond earring	4,450.00
1	Diamond earring	10,285.00
1	Diamond earring	5,970.00
1	Diamond earring	7,700.00
1	Diamond earring	7,150.00
1	Diamond earring	9,970.00
1	Diamond earring	6,700.00
1	Diamond earring	8,700.00
1	Diamond ring	5,850.00
1	Diamond ring	4,800.00
1	Diamond ring	4,120.00
1	Diamond ring	4,020.00

1	Diamond ring	2,820.00
1	Diamond ring	3,500.00
1	Diamond ring	6,200.00
1	Diamond ring	4,250.00
1	Diamond ring	5,450.00
1	Diamond ring	5,000.00
1	Diamond ring	4,120.00
1	Diamond ring	5,450.00
1	Diamond ring	5,450.00
1	Diamond ring	2,950.00
1	Diamond pendant w/ china jade	31,200.00
2	Italian gold bangles	3,000.00
2	Italian gold bangles	2,700.00
1	Italian gold bangles	1,200.00
1	Italian gold bangles	1,200.00
1	Italian gold necklace	4,600.00
1	Italian gold bracelet	5,700.00
1	Italian gold bracelet	7,250.00
1	Italian gold bracelet	6,250.00
1	Italian gold bracelet	3,500.00
1	Italian gold bracelet	3,450.00
1	Italian gold bracelet	3,400.00
1	Italian gold bracelet	2,800.00
1	Italian gold bracelet	5,200.00
1	Italian gold bracelet	3,600.00
1	Italian gold bracelet	6,850.00
1	Diamond ring	3,100.00
1	Diamond ring	3,000.00
1	Gold pendant w/ topaz & onyx stone	3,400.00
1	Didien Lamarthe	11,000.00
1	Christian Dior	12,250.00
		₱ 327,390.00

all belonging to JEEPNEY SHOPPING CENTER, represented by RICARDO M. SALVADOR and an ARMSCOR .38 caliber revolver with SERIAL No. 64517 amounting to ₱9,000.00, more or less, belonging to ENERGETIC SECURITY AGENCY represented by ROMEO SOLANO, to the damage and prejudice of Jeepney Shopping Center in the total amount of ₱327,390.00 and Energetic Security Agency in the total amount of ₱9,000.00 more or less; and on the occasion thereof, accused willfully, unlawfully and feloniously stabbed Gilbert V. Esmaquilan and hit on the head with a 2x2 wood Felix Arañez *y* Gida and Delfin Biniahan *y* Cahtong, Security Guard,

Janitor and maintenance of Jeepney Shopping Center(,) respectively, thereby causing their death; and accused to facilitate their escape thereafter take, steal and drive away a (sic) one (1) Black Honda Civic with Plate No. WFD-891 registered in the name of OLIVER GATCHALIAN.

Contrary to law.[4]

During his arraignment on July 24, 2001, appellant, with the assistance of counsel, pleaded "not guilty" to the crime charged.[5]

The Information was subsequently amended to identify appellant's co- accused as Ricky Ladiana *y* Davao (Ricky), without changing the allegations of the original information.[6] However, accused Ricky remained at-large.

Trial on the merits thereafter ensued.

The evidence for the prosecution is aptly summarized by the Solicitor General in the appellee's brief as follows:

Appellant Antonio Manuel Uy was one of the maintenance crew of the Jeepney Shopping Center located at No. 1913, Taft Avenue, Pasay City, owned by Mr. Jerry Limpe.

Appellant used to be a stay-in employee of the Jeepney Shopping Center. However, appellant could not get along with his co-employees and usually engaged in quarrels with them. In their letter dated March 29, 2001 addressed to Michael Limpe, the son of Jerry Limpe, the co-employees of appellant requested that he be ordered to leave the employees' quarters. Resultantly, appellant was ordered by Michael Limpe to leave the quarters and transfer to another place. Appellant was forced to rent a house in Sandejas St., Pasay City.

When appellant was removed from the employees' quarters, Cecilio Aranez, also a member of the maintenance crew of the Jeepney Shopping Center, heard appellant made a threat, saying "*Balang araw makagaganti ako*."

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[4] *Id.* at 10-12.

[5] Records, p. 25.

[6] *Id.* at 43-46.

Sometime in the first week of June 2001, the co-employees of appellant, including Neptali Tamayo, had a drinking spree at Juz Café along Taft Avenue, Pasay City. The drinking session lasted until 3:00 o'clock in the morning of the following day. On their way home, the group noticed two persons outside the guardhouse of the Jeepney Shopping Center peeping inside. One of these persons was appellant. When the group approached them, they hid themselves inside the guardhouse. Later on, appellant came out from where he hid himself and uttered a joke. Thereafter, appellant and his companion left.

Around 9:00 o'clock in the morning of June 26, 2001, appellant, through a text message, informed Roger Tan, the Supervisor of the Maintenance Department of the Jeepney Shopping Center, that he (appellant) was not feeling well and would not be able to report for work.

Around 11:00 o'clock in the evening, Joel Adol, the security guard of Chang Juat Ltd. Company located at No. 1906, Taft Avenue, Pasay City, saw appellant with a companion standing at the gate of the Jeepney Shopping Center. The security guard had a clear and unobstructed view of the Jeepney Shopping Center as Chang Juat Ltd. Company was just adjacent to it and the Jeepney Shopping Center was brightly lighted. Joel Adol recognized appellant because he used to see him cleaning the premises of the Jeepney Shopping Center and directing traffic in the area. Joel Adol observed that appellant and his companion were looking at his post and were peeping inside the Jeepney Shopping Center. When Joel Adol went inside the building of Chang Juat Ltd. Company around 12:00 o'clock in the evening, he noticed that appellant and his companion were still at the gate of the Jeepney Shopping Center.

Around 5:30 in the morning of June 27, 2001, Carpio Bahatan, a stay-in employee of the Jeepney Shopping Center, discovered the lifeless bodies of Felix Aranez and Delfin Biniahan at the second floor and third floor, respectively, of the main building of the Jeepney Shopping Center. Another stay-in employee, Rico Victor Arbas, discovered the dead body of the security guard, Gilbert Esmaquilan, lying near the guardhouse which was inside the Jeepney Shopping Center compound.

A piece of wood with blood stains was found about three to five meters from the body of Gilbert Esmaquilan. Another blood-stained piece of wood was found in the locker room within the compound but outside the main building of the Jeepney Shopping Center.

At the opening leading to the comfort room in the ground floor of the main building, there were found pieces of jalousie slabs and frames scattered on the ground.

At the second floor, the lifeless body of Felix Aranez was found, lying face down and with feet and hands tied with yellow plastic straw. A piece of cloth was stuck in his mouth and his nape had an incise wound. A bunch of keys was found inside the display cabinet which was in disarray. It was discovered that some pieces of jewelry inside the display cabinet were missing.

At the third floor, the dead body of Delfin Biniahan was found lying on a folding bed between two glass cabinets. He sustained injuries on the upper part of his body. The glass cabinets were splattered with blood. The door of the Administrative Office had been destroyed and bore some traces of blood.

Police Senior Inspector Emmanuel Reyes, Medico-Legal Officer of the Philippine National Police Crime Laboratory, Southern Police District Crime Laboratory Office, conducted an autopsy on the bodies of the three victims. The examination on the body of Felix Aranez revealed that he sustained a hack wound on the nape, measuring 0.3 cm. x 0.7 cm., which could have been caused by a bladed weapon, and hematoma on the occipital region or on the right side of the head, measuring 8 cm. x 8 cm., and on the frontal region just above the right eye which may have been caused by a blunt object. Delfin Biniahan sustained five lacerated wounds on the frontal region, particularly on the forehead, which could have been caused by the application of a hard object, and his lower jaw was displaced toward the left side, which could have been caused by a hard blow. The cause of death of Felix Aranez and Delfin Biniahan was "*intracranial hemorrhages secondary to traumatic injuries of the head.*" Gilbert Esmaquilan sustained multiple stab wounds on the left mammary region piercing the aorta near its attachment to the heart; the left subcostal region piercing the stomach; the vertebral region piercing the underlying soft tissues; the left posterior rib; the right infrascapular region piercing the 7th right posterior intercostal muscle and the lower and upper lobes of the right lung; and the right costal region piercing the posterior right 8th intercostal muscle and the lower and upper lobes of the right lung. The fatal wounds were those which pierced his heart and lungs. The cause of death of Gilbert Esmaquilan was "hemorrhage and shock secondary to multiple stab wounds of the body."

Around 8:30 in the evening of June 28, 2001, appellant met with his girlfriend, Richlie Ladiana ("Richlie"), in the latter's workplace in Panorama Street, SSS Village, Marikina City and gave her ₱6,000.00. Appellant was with co-accused Ricky Ladiana ("Ricky"), Richlie's brother. Richlie noticed that at that time, appellant appeared to have a problem, while Ricky looked stern. After giving the money to Richlie, appellant and Ricky immediately left.

Around 8:30 in the morning, of the following day, June 29, 2001, appellant called up Richlie and asked her to drop by the house of Ricky in Cupang, Antipolo City where he was.

At 8:57 that same morning. appellant also sent a text message to their head supervisor, Roger Tan, which read, *"Boss, Gud morning. Bukas na ako papasok o kaya Lunes ang sama talaga ng trangkaso nabasa K C ako ng ulan nong Martes pag diliver namin."* At 9:57, appellant sent another text message to Roger Tan, which read, *"Boss, balita daw na ako ang suspek sa nangyari dyan boss matagal na ako sa companya kahit alam kong inaapi ako nyo wala akong ginawa na masama sa trabaho ko."*

When Richlie arrived at the house of Ricky, appellant gave her ₱500.00 and asked her to buy him some tee-shirts and shorts. Appellant also asked Richlie to return the ₱6,000.00 which he had earlier given to her because he was leaving for the province.

Around 2:30 in the afternoon, Richlie again dropped by the house of Ricky before going to school. Appellant requested her not to attend her classes anymore because he was leaving for the province. Richlie stayed with appellant in the house of Ricky until 7:00 o'clock in the evening. While appellant was putting on his clothes, Richlie noticed that appellant was wearing a cross pendant. Thereafter, appellant handed to her something wrapped in a newspaper. When she opened the newspaper to look what was inside, she saw 4 pairs of earrings, a pairless earring, and 5 ladies' rings.

Around 9:00 that same evening, appellant and Ricky went to the house of Eduardo dela Cruz ("Eduardo") in Cupang, Antipolo City. Eduardo was the second cousin of the mother of Richlie and Ricky. Ricky looked very nervous and his eyes were reddish, while appellant was very quiet. Ricky told Eduardo that they were in trouble and asked him to accompany appellant to the house of Panfilo dela Cruz, Eduardo's first cousin, in Sitio Tibol, Barangay Salasa, Palauig, Iba, Zambales. Ricky told Eduardo that appellant will be staying in Zambales for two to three days. Eduardo acceded to such request.

Eduardo and appellant proceeded to the bus terminal of Victory Liner in Cubao, Quezon City. When they arrived in Cubao around 11:30 that same evening, the last trip for Zambales had already left. Appellant told Eduardo that they will just get a taxi in going to Olongapo City. They were able to hire a taxi for ₱1,500.00. They arrived in Olongapo City around 1:00 o'clock in the morning of the following day, June 30, 2001. While waiting for a bus going to Zambales, they drank coffee in a nearby store. During their conversation, Eduardo asked appellant what happened. Appellant confessed to Eduardo that he and Ricky entered a place in Pasay City and they killed two persons and seriously wounded another whom they left fighting for his life. Appellant also told Eduardo about the vault which contained money and that if "he can open the vault, and even if they die their family will live comfortably." Further, appellant told Eduardo that nothing will be traced to him because his hands were wrapped such that no fingerprints would be recovered from the crime scene. They arrived at the house of Panfilo dela Cruz around 6:00 o'clock in the morning. Eduardo introduced appellant to Panfilo dela Cruz and told the latter that appellant will be staying there for about two (2) days. At noontime, Eduardo went back to Manila.

After a week, Eduardo went to SPO3 Rodrigo Urbina of the PNP Regional Mobile Patrol Group. Eduardo told SPO3 Urbina what was confessed to him by appellant and that he brought appellant to Zambales. SPO3 Urbano coordinated with the Pasay City Police Station, Crime Investigation Division, for appellant's arrest.

Around 5:00 o'clock in the morning of July 12, 2001, the joint team of the Regional Mobile Patrol Group, the Pasay City Police Station and the Palauig Police Station arrested appellant in the house of Panfilo dela Cruz. Appellant was frisked and a cross pendant was recovered from his pocket.

The inventory conducted by Cresilda Tigolo, the accounting clerk of Jeepney Shopping Center, revealed that 191 pieces of jewelry in the amount of ₱304,140.00 and 2 imported bags worth ₱23,250.00 were stolen. The stolen items had a total value of ₱327,390.00.

The gold pendant recovered from appellant was worth ₱3,400.00. Also recovered were a diamond earring worth [₱]6,700.00 and a diamond ring worth ₱5,450.00 which Richlie had pawned through a friend Wilfredo Mazo. Said pawned items were recovered from Villarica Pawnshop, Inc., in Marikina City. Thus, the total amount of the pieces of jewelry recovered was ₱15,550.00.

The .38 Caliber Armscor revolver service weapon of victim Gilbert Esmaquilan, owned by the Energetic Security Specialist, was recovered by PO3 Edison Cabotaje in the house of Ricky Ladiana.

The Honda VTEC 1999 model car with plate no. WFD 891, owned by a certain Oliver Gatchalian, which had been used as the "getaway" car by appellant, was recovered somewhere in Quezon City.[7]

For his part, appellant denied having committed the crime charged against him. He testified that on June 26, 2001, he called up Jeepney Shopping Center to inform them that he was sick. He later decided to go to the house of his niece Lea Ezra Uy in Caloocan to have a massage. He was there from 8:30 p.m. until the following morning. At noontime of June 27, 2001, Richlie, his girlfriend and Ricky's sister, called him up asking for money to pay for her tuition fee. At around 7 p.m., he met with her in Marikina and gave her ₱6,000.00.[8]

On June 28, 2001, appellant went to Richlie's place and saw her and her brother Ricky arguing about an incident that happened at Jeepney Shopping Center. Richlie showed appellant a newspaper where his name appeared as a suspect. Ricky then put his arms around him saying "*huwag ka na lang maingay*." He then told Ricky that he could not keep quiet because he was afraid that he might be implicated since he knew that Ricky and his companions were the ones responsible for the incident. Ricky then gave him a package containing two pairs of earrings and three pieces of rings but declined to accept them as he already had many.[9]

After a while, Eduardo dela Cruz, Ricky's uncle, arrived and invited them to drink. Eduardo told him that he should be acquainted with Richlie's relatives in Zambales. Although appellant knew that he only had three days leave, he agreed to go with Eduardo to Zambales. Before he left for Zambales, he gave the pieces of jewelry which Ricky gave him to Richlie.

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[7] CA *rollo*, pp. 157-168.

[8] TSN, December 12, 2002, pp. 6-13.

[9] *Id.* at 16-21.

Richlie gave him back the ₱6,000.00 he earlier gave her saying he might be needing the money for his trip.[10]

Around 9 p.m. of June 29, 2001, he and Eduardo rode a taxi going to Olongapo City. They were not able to talk to each other since he was asleep the whole trip. Then they boarded a bus going to Zambales. They reached the house of Panfilo dela Cruz, Eduardo's cousin, in Palauig, Zambales around 4 a.m. the following day, Eduardo introduced him to Panfilo as Richlie's fiancé. After breakfast, Eduardo told him that he was going back to Manila and would just fetch him after two or three days.[11]

On July 12, 2001, three policemen entered his room and arrested him. They boarded him in a van and brought him to the Zambales Police Station. PO3 Michael Manarang took a pendant from his pocket and told him that he already had an evidence against him. He was tortured to admit the crime.[12]

On September 30, 2003, the RTC rendered its Decision[13] convicting appellant of robbery with homicide and imposing upon him the penalty of death. The dispositive portion of the decision reads:

> WHEREFORE, the Court, after considering the qualifying/ aggravating circumstances attending the commission of the crime, finds the accused Antonio Manuel Uy *y* Suangan GUILTY beyond reasonable doubt, as principal, of the Special Complex Crime of Robbery with Homicide in violation of paragraph 1, Article 294 of the Revised Penal Code, as amended by Republic Act 7659, and hereby sentences him to suffer the extreme penalty of DEATH by lethal injection. The accused is likewise ordered to indemnify the following:
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> a) the legal heirs of the late Aranez the sum of ₱50,000.00 as death indemnity;

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[10] *Id.* at 23-32.

[11] *Id.* at 35-41.

[12] TSN, January 10, 2003, pp. 13-15.

[13] CA *rollo*, pp. 116-130; Per Judge Vicente L. Yap

b) the legal heirs of the late Biniahan the sum of ₱50,000.00 as death indemnity;

c) the legal heirs of the late Esmaquilan the sum of ₱50,000.00 as death indemnity;

d) the Jeepney Shopping Center the sum of ₱311,840.00 as reparation of the damage caused; and

e) the Energetic Security Agency the sum of ₱49,784.75 for the funeral expenses of guard Esmaquilan.

Considering the penalty imposed, let the records of this case be forwarded for automatic review by the Honorable Supreme Court within twenty (20) days, but not earlier than fifteen days after promulgation of this judgment.

SO ORDERED.[14]

The case was elevated to Us on automatic review. In a Resolution[15] dated August 24, 2004, pursuant to our ruling in *People v. Mateo*,[16] we referred the case to the CA.

On July 18, 2006, the CA issued the assailed decision, the dispositive portion of which reads:

WHEREFORE, the court AFFIRMS the decision of the Trial Court in convicting Antonio Manuel Uy of the crime of Robbery with Homicide and MODIFIES the penalty imposed from death penalty to *reclusion perpetua*.

The accused is likewise ordered to indemnify the following:

a) the legal heirs of the late Aranez the sum of ₱50,000.00 as death indemnity;
b) the legal heirs of the late Biniahan the sum of ₱50,000.00 as death indemnity;
c) the legal heirs of the late Esmaquilan the sum of ₱50,000.00 as death indemnity;
d) the Jeepney Shopping Center the sum of ₱311,840.00 as reparation of the damage caused; and

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[14] *Id.* at 129-130.

[15] *Id.* at 77.

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

e) the Energetic Security Agency the sum of ₱49,784.75 for the funeral expenses of guard Esmaquilan.

SO ORDERED.[17]

In a Resolution[18] dated November 20, 2006, we accepted the appeal, the penalty imposed being *reclusion perpetua*. We required the parties to submit their respective supplemental briefs if they so desire.

Appellant filed a Manifestation[19] dated February 8, 2007 stating that he adopts his Appellant's Brief as Supplemental Brief.

The Office of the Solicitor General (OSG) filed its Manifestation and Motion[20] dated March 2, 2007, in lieu of the supplemental brief, stating that it will adopt its Appellee's Brief as its Supplemental Brief in order to avoid repetitious discussions of the issues that had been addressed in its appellee's brief and to prevent further delay.

In his Brief, appellant assigned the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY.[21]

We find no merit in this appeal.

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[17] CA *rollo*, p. 221.

[18] *Rollo*, p. 28.

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

[20] *Id.* at 35-37.

[21] CA *rollo*, p. 83.

Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property belongs to another; (3) the taking is *animo lucrandi* or with intent to gain; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed.[22] A conviction needs certainty that the robbery is the central purpose and objective of the malefactor and the killing is merely incidental to the robbery.[23] The intent to rob must precede the taking of human life, but the killing may occur before, during or after the robbery.[24]

In this case, we find that the evidence presented by the prosecution had established beyond reasonable doubt that the crime of robbery with homicide was indeed committed. As the CA correctly observed:

> x x x The removal of the jalousies in the restroom of the Jeepney Shopping Center to gain entrance, the destruction of the display cabinet where the items were kept, the destruction of the lock leading to the cashier's office on the third floor of the building; and the inventory of missing items makes the situation possess the first essential element as stated above. In robbery by the taking of the property through intimidation or violence, it is not necessary that the person unlawfully divested of the personal property be the owner thereof, robbery may be committed against a bailee or a person who himself stole it. As long as the taker of the personal property is not the owner, the second element exists. The third element is *animus lucrandi* or intent to gain which is defined by the Supreme Court as "an internal act which can be established through the overt

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[22] *People v. Baron*, G.R. No. 185209, June 28, 2010, 621 SCRA 646, 656; *People v. De Jesus*, 473 Phil. 405, 426-427 (2004), citing *People v. Pedroso*, 336 SCRA 163 (2000).

[23] *Id.*

[24] *People v. Baron, supra* note 22, citing *People v. Dela Cruz*, 575 SCRA 412, 436 (2008); *People v. Musa*, G.R. No. 170472, July 3, 2009, 591 SCRA 619, 641.

acts of the offender, and it may be presumed from the furtive taking of useful property pertaining to another, unless special circumstance reveal a different intent on the part of the perpetrator." We agree with the finding of the trial court that: "the intent to steal was likewise proven from accused's statement to Eduardo dela Cruz to the effect that if they were able to open the vault, their families would have lived a good life even if they die in the process." On the other hand, the accused was proven to be a friend of, and was with, Ricky Ladiana right after the commission of the crime as testified to by Richlie Ladiana, his lover. Being so when the firearm of the fallen guard was found from the abandoned house of Ricky, the conclusion is that Ricky and Antonio Uy have been together at the shopping center and presumed the taker of a thing taken or doer in the doing of a recent wrongful act. In the instant case, no special circumstance was present to belie the presumption of the intent to gain of the accused-appellant. The existence of the fourth element is incontestable. The homicide preceded the robbery but committed on the occasion thereof, the purpose is to eliminate an obstacle to the commission of robbery. The grudge of the appellant against his former co-workers Felix Aranez and Delfin Biniahan is not sufficient to overcome the presumption and evidence of intent to gain, it is clear that the victims were killed on the occasion of robbery and to commit robbery. Essential in robbery with homicide is that there is a nexus, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time.[25]

While there was no direct evidence to establish appellant's participation in the commission of the crime, direct evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[26] The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free

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[25] CA *rollo*, pp. 216-217.

[26] *Salvador v. People*, G.R. No. 164266, July 23, 2008, 559 SCRA 461, 469-470; *People v. Almoguerra*, 461 Phil. 340, 356 (2003).

and deny proper protection to the community.[27] Thus, Section 4, Rule 133 of the Revised Rules of Court on circumstantial evidence requires the concurrence of the following: (1) there must be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt of the guilt of the accused. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[28]

We have carefully gone over the records of the case and we find that the circumstantial evidence presented by the prosecution established beyond reasonable doubt that appellant and his co-accused Ricky conspired to commit the crime of robbery with homicide. We find apropos the CA's ratiocination in this wise:

> x x x We concord with the trial court that the success of the prosecution in discharging its duty to prove the guilt of the accused is anchored in the circumstantial evidence present and proven in this case, to wit:
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> 1. Possession of the stolen goods by the accused and his girlfriend was not satisfactorily explained;
> 2. Intent to steal was evident in his confession to Eduardo dela Cruz who had no reason to lie as he even helped him to escape;
> 3. Participation in the commission of the crime was proven by the tracing of the possession of the deceased's firearm at Ricky Ladiana's house, accused Antonio's friend and companion right after the killing;
> 4. Antonio Manuel Uy was seen in person by a guard at the scene of the crime on the night of the robbery and killing;
> 5. Suspicious presence at the place of robbery immediately before the incident;
> 6. Antonio Manuel Uy's cellphone was established as the sender of text messages to at least two co-employees of his; [and]

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[27] *Salvador v. People, supra*, at 469-470, citing *People v. Padua*, 516 SCRA 590, 600-601 (2007).

[28] *Id.* at 470.

7. Confession/testimony of Richlie Ladiana, acknowledged sweetheart of accused Uy that the latter gave her the jewelries, part of the stolen jewelries from the shopping center.

Another circumstance is the unexplained impromptu vacation of Antonio Manuel Uy. It has been ruled that flight *per se* cannot prove the guilt of an accused. But if the same is considered in the light of other circumstances, it may be deemed a strong indication of guilt. Considering the surrounding circumstances when he left with Eduardo dela Cruz for Palauig, Zambales, We could draw a conclusion that he is trying to evade something in his work place. Settled is the rule that flight of an accused, when unexplained, is a circumstance from which an inference of guilt may be drawn.[29]

In his appeal with the CA and with Us, appellant contends that contrary to the RTC findings, he was able to satisfactorily explain the circumstance of his possession of the stolen pieces of jewelry. He claims that Ricky, Richlie's brother, insisted on giving him those pieces of jewelry, but since he was afraid he might be implicated in the commission of the crime which Ricky and his companion had committed, he decided to leave the pieces of jewelry to Richlie. As to the cross pendant which was also part of the stolen items allegedly recovered from him, appellant claims that the same was merely planted on him by PO3 Michael Manarang. He further contends that assuming there is truth to Richlie's allegation that the pieces of jewelry which she pawned came from him, the stolen items did not prove his culpability for robbery with homicide.

Appellant's explanations do not inspire belief.

Appellant testified that when Ricky gave him the valuable pieces of jewelry, he declined to receive them saying that he already had many jewelry,[30] yet he was still in possession of these items and he even admitted giving them to Richlie.[31] In fact, Richlie categorically declared that before they parted ways

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[29] CA *rollo*, pp. 217-218.

[30] TSN, December 12, 2002, p. 21.

[31] *Id.* at 32.

at around 7 p.m. of June 29, 2001, appellant gave her something wrapped in a newspaper.[32] Upon reaching her house, she opened the wrapped newspaper which contained 4 pairs of diamond earrings, a pairless diamond earring and 5 pieces of diamond rings.[33] Richlie testified that appellant called her up and instructed her to pawn the items as he needed money,[34] thus, Richlie asked her friend Wilfredo Mazo to pawn the diamond ring and a pair of earrings to Villarica pawnshop.[35] Later, Mazo, together with Richlie and SPO3 Rodrigo Urbina, went to the pawnshop and redeemed the items[36] which were proved to be part of the stolen items.

Appellant's claim that the cross pendant found on him at the time of his arrest was merely planted by PO3 Manarang was not proven at all. In fact, P03 Manarang rebutted such claim by testifying that as member of the arresting team of the Pasay Police, he saw PO3 Ernie Cabrega searched appellant's body and recovered from him the cross pendant.[37] PO3 Cabrega, in his direct examination, positively declared that upon appellant's arrest, he searched the latter's body and found the cross pendant at the back of his pocket.[38] The presumption of regularity in the performance of official duties was not overcome as there was no evidence showing that the police officers were impelled by improper motive.

In fact, Richlie corroborated the testimonies of these two police officers when she declared that she saw appellant wearing the cross pendant for the first time on June 29, 2001,[39] thus, establishing appellant's possession of the cross pendant even before his arrest on July 12, 2001. The recovery of the stolen

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[32] TSN, April 10, 2002, p. 11.

[33] *Id.*

[34] TSN, April 16, 2002, p. 5.

[35] TSN, April 10, 2002 , pp. 10-11.

[36] TSN, April 16, 2002, p. 17; TSN, July 4, 2002, pp. 7-8.

[37] TSN, March 25, 2003, p. 13.

[38] TSN, June 11, 2002, pp. 11-12.

[39] TSN, April 10, 2002, pp. 9, 14.

items which admittedly came from appellant gives rise to the legal presumption of guilt which he failed to overcome, thus, he must necessarily be considered the author of the robbery and the killings.[40]

Appellant argues that his alleged confession to Eduardo dela Cruz was not sufficient to convict him of the crime as the latter's testimony merely established that appellant admitted his intention to rob a vault at an unspecified place; that even if he (appellant) allegedly admitted the killings, Eduardo did not state who between him and his co-accused Ricky committed the killing.

Such argument deserves scant consideration.

Eduardo testified that appellant told him that the main purpose of appellant and his co-accused Ricky in entering the Jeepney Shopping Center was to open the vault to get everything in it, which cost millions of pesos that would make their families live comfortably;[41] that when they entered the establishment, they immediately looked for the vault and in the process killed three people.[42] It has been established that they were able to open the glass showcase containing the valuable pieces of jewelry.[43] Cresilda Tigolo, the shopping center's employee who is responsible for preparing the monthly inventory of the pieces of jewelry for sale, testified that pieces of jewelry and imported bags with a total amount of ₱327,390.00 were missing.[44] Moreover, it has also been proven that on the occasion of the robbery, two stay-in staff and the guard on duty in the Jeepney Shopping Center were killed.

Appellant's confession to Eduardo, who is not a police officer, is admissible in evidence.[45] The declaration of an accused

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[40] *People v. Escote, Jr.*, 448 Phil. 749, 782 (2003).

[41] TSN, March 21, 2002, p. 17.

[42] *Id.* at 17; TSN, March 12, 2002, p. 19.

[43] TSN, November 29, 2001, pp. 4-24.

[44] TSN, December 18, 2001, p. 41.

[45] *People v. Suela*, 424 Phil. 196, 228 (2002), citing *People v. Aringue*, 263 SCRA 291 (1997), *People v. Andan*, 269 SCRA 95 (1997) and *People v. Tawat*, 129 SCRA 431 (1984).

acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him.[46] Appellant's admissions are not covered by Section 12 (1) and (3) of Article III of the Constitution,[47] because they were not extracted while he was under custodial investigation. The rule is that any person, otherwise competent as a witness, who heard the confession, is competent to testify as to the substance of what he heard and understood all of it. An oral confession need not be repeated verbatim, but in such case it must be given in its substance.[48] And case law has it that whenever homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.[49] There was no showing that appellant attempted to prevent the killing.

Appellant argues that neither the text messages he sent to his supervisor, Roger Tan (Tan), nor to a co-worker, Bernardo Cruz (Cruz), would prove that he was responsible for the robbery with homicide.

We are not convinced.

At 8:57 a.m. of June 29, 2001, appellant texted Tan telling the latter that he will just report for work the following day, or Monday, because he had a fever.[50] At 9:57 a.m., appellant again texted Tan saying that he learned that he was a suspect in the incident that happened in the shopping center and that he did nothing wrong in his work.[51] On July 1, 2001, appellant texted

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[46] *Id.* at 229, citing Rules of Court, Rule 130, Sec. 33.

[47] *Id.*, citing *People v. Andan*, *supra* note 45.

[48] *Id.*, citing *People v. Tawat*, *supra* note 45, at 436-437.

[49] *People v. Escote*, *supra*, note 40, at 631, citing *People v. Cando*, 344 SCRA 330 (2000).

[50] TSN, February 14, 2002, p. 18.

[51] *Id.* at 20.

Cruz asking why he was considered a suspect when he and his wife were on their honeymoon.[52] Appellant's excuses for not reporting for work since June 26, 2001 were contradictory showing their untruthfulness. Significantly, while appellant already knew that he was considered a suspect to a very serious crime, he did not report for work anymore. If he was really innocent of the crime as he professed to be, he should have immediately thought of clearing himself of any suspicion. Instead, on the night of June 29, 2001, appellant hurriedly left for Zambales and hid thereat until his arrest on July 12, 2001. Appellant's sudden and unexplained trip to Zambales at the time that he was considered a suspect and had a work to report to was undoubtedly flight from justice which is an indication of a guilty mind. "*Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion.*"[53]

Appellant contends that the recovery of the service firearm of the slain security guard Esmaquilan at Ricky's house did not prove his participation in the commission of the crime. Appellant even pointed to Ricky and his companions as the ones responsible for the crime of robbery with homicide.

Such defense is far from convincing.

Joel Adol, the security guard on duty at Chong Hwat Company located adjacent the shopping center, testified that around 11 p.m. of June 26, 2001, he saw two persons, one of whom he identified as appellant peeping inside the compound of the Jeepney Shopping Center.[54] He was familiar with appellant, as he had seen him directing traffic in the area and cleaning the premises of the shopping center.[55] He clearly saw appellant as there was a light coming from the bank beside the shopping center, as well as the light coming from the guardhouse of the shopping center.[56]

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[52] TSN, December 11, 2001, pp. 50, 53.

[53] *People v. Dela Cruz*, 459 Phil. 130, 137 (2003).

[54] TSN, November 20, 2001, p. 11.

[55] *Id.* at 14.

[56] *Id.* at 13.

Notably, that was the night before the crime was discovered the following morning.

Also, Richlie testified that on June 28, 2001, *i.e.*, the day after the crime was committed, appellant, together with her brother, co-accused Ricky, came to see her at her employer's house in Marikina.[57] She noticed that Ricky looked sterned while appellant looked bothered as if they have a problem[58] and then appellant gave her ₱6,000.00 and told her to study hard. On June 29, 2001, Richlie met again with appellant and her brother at the latter's house in Antipolo, where appellant asked her to return the money he gave her as he was leaving for the province.[59] They were together in Ricky's house until she left at 7 p.m.[60]

Moreover, Eduardo dela Cruz, Richlie and Ricky's uncle, testified that at 9 p.m. of June 29, 2001, Ricky, together with appellant, came to his place in Cupang, Antipolo.[61] Ricky asked him to bring appellant to the house of Panfilo dela Cruz, Eduardo's cousin and Ricky's uncle, in Zambales because Ricky and appellant were in trouble.[62] He was told that appellant would stay in Panfilo's house for only two to three days. Eduardo observed that Ricky's eyes were reddish and he was nervous, while appellant was quiet.[63] Eduardo obliged and brought appellant to Zambales and endorsed him to his cousin Panfilo. It was during their trip that appellant told him what they did in Jeepney Shopping Center. In the meantime, Ricky, together with his family, packed their things and left their house on June 30, 2001 and never returned.[64] The actuations of appellant and his co-accused Ricky are not the normal behavior of innocent men.

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[57] TSN, April 3, 2002, p. 34.

[58] *Id.* at 36.

[59] TSN, April 10, 2002, p. 7.

[60] *Id.* at 9.

[61] TSN, March 12, 2002, p.

[62] *Id.* at 8.

[63] *Id.* at 9.

[64] TSN, April 10, 2002, p. 16.

Their flight without plausible explanation, coupled with the recovery of the gun of the slain security guard in Ricky's house, establish that they were together in committing the crime.

Appellant's defense consisted merely of alibi. To prosper, alibi must meet strictly the requirements of time and place,[65] meaning that the accused was not at the scene of the crime at the time it was committed, and that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.[66]

In this case, appellant claims that on June 26, 2001, he was at the house of his niece, Lea Ezra, in Caloocan from 8:30 p.m. until the following day. Notably, appellant failed to present corroborating witness to strengthen his alibi. Moreover, appellant failed to show that it was physically impossible for him to be present at the *locus criminis*, considering that at nighttime, Caloocan would only be more than an hour's travel to the crime scene in Pasay City. But most importantly, security guard Joel Adol positively declared that he saw appellant with a companion at the Jeepney Shopping Center around 11 p.m. of June 26, 2001. And it is only axiomatic that positive testimony prevails over negative testimony.[67]

The CA correctly modified the penalty imposed by the RTC. We agree with the CA that the RTC erred in appreciating the aggravating circumstances of nocturnity and treachery when they were not specifically alleged in the information. Sections 8 and 9 of Rule 110 of the 2000 Revised Rules on Criminal Procedure, which became effective on December 1, 2000, provides that aggravating circumstances must be alleged in the information, otherwise, they cannot be considered against the accused even if they are proven during the trial.

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[65] *People v. Piandiong*, 335 Phil. 1028, 1042 (1997), citing *People v. Matildo*, 230 SCRA 635 (1994) and *People v. Dela Cruz*, 229 SCRA 754 (1994).

[66] *Id.*, citing *People v. Saguban*, 231 SCRA 744 (1994) and *People v. Dolor*, 231 SCRA 414 (1994).

[67] *People v. Ebet*, G.R. No. 181635, November 15, 2010.

The special complex crime of robbery with homicide is punishable under Article 294, as amended by Republic Act No. 7659 of the Revised Penal Code, as amended, by *reclusion perpetua* to death. Article 63 of the Revised Penal Code, as amended, states that when the law prescribes a penalty consisting of two (2) indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed.[68] Considering that there was no modifying circumstance which attended the commission of the crime, the CA correctly modified the penalty to *reclusion perpetua*.

In robbery with homicide, civil indemnity and moral damages in the amount of ₱50,000.00 each is granted automatically in the absence of any qualifying aggravating circumstances.[69] These awards are mandatory without need of allegation and evidence other than the death of the victim owing to the fact of the commission of the crime.[70] In this case, the RTC, as affirmed by the CA, properly awarded the amount of ₱50,000.00 as civil indemnity.

The heirs of the victims are also entitled to the award of moral damages in the amount of ₱50,000.00 each. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing.[71]

We likewise affirm the RTC's Order for appellant to indemnify the Jeepney Shopping Center the sum of ₱311,840.00 as reparation and the Energetic Security Agency the sum of ₱49,784.75 for the funeral expenses of security guard Esmaquilan.

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[68] *Crisostomo v. People*, G.R. No. 171526, September 1, 2010, 629 SCRA 590, 603, citing *People v. Musa*, 591 SCRA 619, 643-644 (2009).

[69] *Id.* at 603.

[70] *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367.

[71] *People v. Musa*, *supra* note 68, at 644; *People v. Piedad*, 441 Phil. 818, 839; (2002), cited in *People v. Rubis*o, 447 Phil. 374, 383 (2003).

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00110 is *AFFIRMED with MODIFICATION* that petitioner is also *ORDERED* to pay the heirs of the victims the amount of ₱50,000.00 each as moral damages.

The police and other law enforcement agencies of the government are *ORDERED* to immediately implement the warrant of arrest issued against Ricky Ladiana *y* Davao, for him to stand trial.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Abad,[*] and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 175251. May 30, 2011]

RODOLFO LUNA, *petitioner, vs.* **ALLADO CONSTRUCTION CO., INC., and/or RAMON ALLADO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC) RULES OF PROCEDURE; APPEAL; THAT THE NLRC SHALL LIMIT ITSELF ONLY TO THE SPECIFIC ISSUES THAT WERE ELEVATED FOR REVIEW. — Section 4(c), Rule VI of the 2002 Rules of Procedure of the NLRC, which was in effect at the time respondents appealed the Labor Arbiter's decision, expressly provided that, on appeal, the NLRC shall limit itself only to the specific issues that were elevated for review, to wit: x x x As a testament to its effectivity and the

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated May 30, 2011.

NLRC's continued implementation of this procedural policy, the same provision was retained as Section 4(d), Rule VI of the 2005 Revised Rules of Procedure of the NLRC. x x x [As the] NLRC shall, in cases of perfected appeals, limit itself to reviewing those issues which are raised on appeal, x x x any other issues which were not included in the appeal shall become final and executory.

2. ID.; ID.; AUTHORITY OF THE NLRC TO "CORRECT ERRORS" IN THE EXERCISE OF ITS APPELLATE JURISDICTION DOES NOT INCLUDE REVIEW OF THE ENTIRE CASE ABOVE AND BEYOND THE SOLE LEGAL QUESTION RAISED. — We are cognizant of the fact that Article 218(c) of the Labor Code grants the NLRC the authority to "correct, amend or waive any error, defect or irregularity whether in substance or in form" in the exercise of its appellate jurisdiction. However, a careful perusal of the body of jurisprudence wherein we upheld the validity of the NLRC's invocation of that prerogative would reveal that the said cases involved factual issues and circumstances materially dissimilar to the case at bar. x x x On the other hand, it is already settled in jurisprudence that the NLRC may not rely on Article 218(c) of the Labor Code as basis for its act of reviewing an entire case above and beyond the sole legal question raised. In *Del Monte Philippines, Inc. v. National Labor Relations Commission*, which was correctly pointed out by the Court of Appeals as a case that is on all fours with the case at bar, we held that the NLRC cannot, under the pretext of correcting serious errors of the Labor Arbiter in the interest of justice, expand its power of review beyond the issues elevated by an appellant.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS; IN CASE OF DIVERGENT APPRECIATIONS OF FACTS BY THE LABOR ARBITER AND THE COURT OF APPEALS ON ONE SIDE AND THE NLRC ON THE OTHER. — [I]n a petition under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Court. However, where the findings of the NLRC contradict those of the Labor Arbiter, the Court, in the exercise of equity jurisdiction, may look into the records of the case and reexamine the questioned findings. In the case at bar, we are constrained

to reexamine the factual findings of the Labor Arbiter and the Court of Appeals, on one side, and of the NLRC, on the other, since they have divergent appreciations of the facts of this case.

4. ID.; ID.; ID.; A PARTY THAT DID NOT APPEAL A JUDGMENT IS BOUND BY THE SAME. — Verily, it is settled in jurisprudence that a party that did not appeal a judgment is bound by the same and he cannot obtain from the appellate court any affirmative relief other than those granted, if any, in the decision of the lower court or administrative body.

5. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; TERMINATION WITH NEITHER ILLEGAL DISMISSAL NOR ABANDONMENT OF WORK, GRANT OF FINANCIAL ASSISTANCE MADE PROPER BY SOCIAL JUSTICE. — [P]etitioner argued in his Memorandum that, assuming without admitting that there was no illegal dismissal, the award of financial assistance was in accordance with existing jurisprudence pursuant to the principle of social justice. On this point, we agree with petitioner. x x x There appears to be no reason why petitioner, who has served respondent corporation for more than eight years without committing any infraction, cannot be extended the reasonable financial assistance of ₱18,000.00 as awarded by the Labor Arbiter on equity considerations. We see no merit in respondents' contention that petitioner was guilty of insubordination or abandonment. Significantly, the Labor Arbiter made no [such findings]. x x x In some cases where there is neither a dismissal nor abandonment, we have previously held that separation pay may be awarded under appropriate circumstances.

6. REMEDIAL LAW; INTERNAL RULES OF THE COURT OF APPEALS (CA); TEMPORARY RESTRAINING ORDER (TRO) GRANTED BY THE CA JUSTICE CASE *PONENTE*, EVEN WITHOUT THE CONCURRENCE OF THE DIVISION'S OTHER ASSOCIATE JUSTICES, ALLOWED IN CASE OF EXTREME URGENCY. — The granting of a TRO by a justice of the Court of Appeals who is the *ponente* of the case, even without the concurrence of the other associate justices assigned in the division, is allowed under Section 5, Rule VI of the 2002 Internal Rules of the Court of Appeals, to wit: x x x The records of this case would attest to the urgency of the situation which necessitated the

exceptionally prompt issuance of the TRO at issue. x x x Nonetheless, the grant of said TRO was subsequently concurred in by the rest of the members of the Division.

APPEARANCES OF COUNSEL

De Vera Law Office for petitioner.
Nitorreda Law Office for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the Decision[1] dated July 28, 2006 of the Court of Appeals as well as its Resolution[2] dated September 28, 2006 denying the motion for reconsideration filed by petitioner.

As narrated in the Court of Appeals' July 28, 2006 Decision, the facts of this case are as follows:

[Respondent] Allado Construction Co., Inc. is a juridical entity engaged in the construction business; [respondent] Ramon Allado is the President of the said corporation.

[Petitioner] filed a complaint before the Executive Labor Arbiter Arturo Gamolo, RAB Branch XI, Davao City, alleging that he was an employee of herein [respondents], having been a part of [respondents'] construction pool of personnel. He had continuously rendered services as a warehouseman and a timekeeper in every construction project undertaken by [respondents]. Sometime in the afternoon of November 24, 2001, while at [respondents'] construction site in Maasim, Sarangani Province, he was given a travel order dated November 24, 2001 to proceed to [respondents'] main office in Davao City for reassignment. Upon arrival at the office of [respondents] on November 26, 2001, he was told by one Marilou

[1] *Rollo*, pp. 36-46; penned by Associate Justice Romulo V. Borja with Associate Justices Ramon R. Garcia and Sixto C. Marella, Jr., concurring.

[2] *Id.* at 49.

Matilano, personnel manager of [respondents], to sign several sets of "Contract of Project Employment." He refused to sign the said contracts. Because of his refusal, he was not given a reassignment or any other work. These incidents prompted him to file the complaint.

[Respondents], on the other hand, alleged that on November 29, 2001, [petitioner] applied for a leave of absence until December 6, 2001, which was granted. Upon expiration of his leave, [petitioner] was advised to report to the company's project in Kablacan, Sarangani Province. However, he refused to report to his new assignment and claimed instead that he had been dismissed illegally.[3]

Finding that petitioner should be deemed to have resigned,[4] the Labor Arbiter dismissed petitioner's complaint for illegal dismissal against respondents, but ordered the latter to pay the former the amount of ₱18,000.00 by way of financial assistance. The dispositive portion of the Decision[5] dated June 26, 2002 of the Labor Arbiter is as follows:

WHEREFORE, foregoing considered, judgment is hereby rendered dismissing the action for illegal dismissal but ordering respondent ALLADO CONSTRUCTION CO., INC. to extend complainant RODOLFO LUNA the amount of PESOS: EIGHTEEN THOUSAND PESOS (₱18,000.00) by way of financial assistance to tide him over during his post-employment with the former.[6]

Only respondents interposed an appeal with the National Labor Relations Commission (NLRC), purely for the purpose of questioning the validity of the grant of financial assistance made by the Labor Arbiter.

In its Resolution[7] dated May 9, 2003, the NLRC reversed the June 26, 2002 Decision of the Labor Arbiter and declared respondents guilty of illegal dismissal and ordered them to pay petitioner one-month salary for every year of service as separation

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

[4] *Id.* at 26.

[5] *Id.* at 23-28.

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

[7] Records, Vol. 2, pp. 21-24.

pay, computed at ₱170.00 per day and full backwages from November 21, 2001 up to the finality of the decision. The dispositive portion of the May 9, 2003 NLRC Resolution reads:

> WHEREFORE, the appeal is Granted and the assailed Decision is reversed and vacated; A new judgment is rendered declaring respondents-appellant guilty of illegal dismissal and to pay complainant-appellant one (1) month salary for every year of service as separation pay, computed at ₱170.00 per day and full backwages from November 21, 2001 up to the finality of the decision.[8]

Respondents moved for reconsideration but their motion was denied in the NLRC Resolution[9] dated September 30, 2003 due to lack of merit.

Unperturbed, respondents elevated their cause to the Court of Appeals *via* a petition for *certiorari* under Rule 65 of the Rules of Court to set aside the aforementioned NLRC issuances and to reinstate the Labor Arbiter's decision with the modification that the award of financial assistance be deleted. In its Decision dated July 28, 2006, the Court of Appeals granted respondents' petition for *certiorari* and disposed of the case in this wise:

> ACCORDINGLY, the assailed Orders of respondent Commission are hereby SET ASIDE. The Decision of the Labor Arbiter in NLRC Case No. RAB XI-12-01312-01 is hereby REINSTATED with the MODIFICATION that the award of financial assistance is deleted.[10]

Relying on jurisprudence, the Court of Appeals held that it was grave abuse of discretion for the NLRC to rule on the issue of illegal dismissal when the only issue raised to it on appeal was the propriety of the award of financial assistance. The Court of Appeals further ruled that financial assistance may not be awarded in cases of voluntary resignation.

Expectedly, petitioner filed a motion for reconsideration but this was denied by the Court of Appeals in its Resolution dated September 28, 2006.

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[8] *Id.* at 23.

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

[10] *Rollo*, pp. 45-46.

Hence, this petition for review wherein the petitioner puts forward for resolution the following issues:

(A) WHETHER OR NOT THE NLRC, IN THE EXERCISE OF ITS INHERENT POWERS, COULD STILL REVIEW ISSUES NOT BROUGHT DURING THE APPEAL;

(B) WHETHER OR NOT RESPONDENT COURT OF APPEALS EXERCISED GRAVE ABUSE OF DISCRETION IN DISREGARDING (1) THE FINDINGS OF FACT OF THE NLRC; (2) THE PRINCIPLE OF SOCIAL JUSTICE; AND (3) EXISTING JURISPRUDENCE WITH RESPECT TO AWARD OF FINANCIAL ASSISTANCE; and

(C) WHETHER OR NOT RESPONDENT COURT OF APPEALS EXHIBITED BIAS AND PARTIALITY WHEN IT RENDERED THE SUBJECT DECISION AND RESOLUTION CONSIDERING THE HASTY AND IMPROVIDENT ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION TO FRUSTRATE PETITIONER IN IMPLEMENTING THE FINAL AND EXECUTORY JUDGMENT OF THE NLRC RENDERED IN FAVOR OF PETITIONER.[11]

Anent the first issue, petitioner argues that the NLRC has the authority to review issues not brought before it for appeal. Petitioner bases this argument on Article 218(c) of the Labor Code, which provides:

ART. 218. **Powers of the Commission**. — The Commission shall have the power and authority:

x x x x x x x x x

(c) To conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, **correct, amend, or waive any error, defect or irregularity whether in substance or in form,** give all such directions as it may deem necessary or expedient in the determination

[11] *Id.* at 128-129.

of the dispute before it, and dismiss any matter or refrain from further hearing or from determining the dispute or part thereof, where it is trivial or where further proceedings by the Commission are not necessary or desirable. (Emphasis supplied.)

Furthermore, petitioner attempts to reinforce his position by citing *New Pacific Timber & Supply Company, Inc. v. National Labor Relations Commission*,[12] where the Court expounded on the powers of the NLRC as provided for by Article 218(c) of the Labor Code, to wit:

> Moreover, under Article 218(c) of the Labor Code, **the NLRC may, in the exercise of its appellate powers, "correct, amend or waive any error, defect or irregularity whether in substance or in form."** Further, Article 221 of the same provides that: "In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. x x x."[13] (Emphasis supplied.)

We find petitioner's argument to be untenable.

Section 4(c), Rule VI of the 2002 Rules of Procedure of the NLRC, which was in effect at the time respondents appealed the Labor Arbiter's decision, expressly provided that, on appeal, the NLRC shall limit itself only to the specific issues that were elevated for review, to wit:

> RULE VI
> Appeals
>
> Section 4. Requisites for Perfection of Appeal. x x x.
>
> x x x x x x x x x
>
> (c) Subject to the provisions of Article 218, once the appeal is perfected in accordance with these Rules, the Commission **shall**

[12] 385 Phil. 93 (2000).

[13] *Id.* at 104.

limit itself to reviewing and deciding specific issues that were elevated on appeal. (Emphasis supplied.)

As a testament to its effectivity and the NLRC's continued implementation of this procedural policy, the same provision was retained as Section 4(d), Rule VI of the 2005 Revised Rules of Procedure of the NLRC.

In the case at bar, the NLRC evidently went against its own rules of procedure when it passed upon the issue of illegal dismissal although the question raised by respondents in their appeal was concerned solely with the legality of the labor arbiter's award of financial assistance despite the finding that petitioner was lawfully terminated.

To reiterate, the clear import of the aforementioned procedural rule is that the NLRC shall, in cases of perfected appeals, limit itself to reviewing those issues which are raised on appeal. As a consequence thereof, any other issues which were not included in the appeal shall become final and executory.

We are cognizant of the fact that Article 218(c) of the Labor Code grants the NLRC the authority to "correct, amend or waive any error, defect or irregularity whether in substance or in form" in the exercise of its appellate jurisdiction. However, a careful perusal of the body of jurisprudence wherein we upheld the validity of the NLRC's invocation of that prerogative would reveal that the said cases involved factual issues and circumstances materially dissimilar to the case at bar.

In *New Pacific Timber*,[14] which petitioner cited, we ruled that there was no grave abuse of discretion on the part of the NLRC, using Article 218(c) as part basis, when it entertained the petition for relief filed by a party and treated it as an appeal, even if it was filed beyond the reglementary period for filing an appeal. Before that case, we invoked the same Labor Code provision in *City Fair Corporation v. National Labor Relations Commission*[15] and *Judy Philippines, Inc. v. National Labor*

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[14] *Id.*

[15] 313 Phil. 464, 469 (1995).

Relations Commission[16] to justify our ruling that the NLRC did not abuse its discretion when it allowed in both cases the appeal of a party even if it was filed a day, or even a few days, late. Similarly, we held in *Industrial Timber Corporation v. Ababon*,[17] that substantial justice is best served by permitting the NLRC to allow a petition for relief filed by a party despite the earlier commission of a procedural defect of filing the motion for reconsideration three days late on the strength of Article 218(c) and other pertinent labor law provisions. In *Pison-Arceo Agricultural and Development Corporation v. National Labor Relations Commission*,[18] we held that procedural rules governing service of summons are not strictly construed in NLRC proceedings owing to the relaxation of technical rules of procedure in labor cases as well as to Article 218(c). We likewise held in *Aguanza v. Asian Terminal, Inc.*,[19] that the insufficiency of a supersedeas bond is a defect in form which the NLRC may waive. Furthermore, in *Independent Sagay-Escalante Planters, Inc. v. National Labor Relations Commission*,[20] we ruled that the NLRC had ample authority, under Article 218(c), to disregard the circumstance that the appeal fee had been tardily paid by one party and to order both parties to present evidence before the Labor Arbiter in support of their claims. Lastly, in *Faeldonia v. Tong Yak Groceries*[21] and *Mt. Carmel College v. Resuena*,[22] we used Article 218(c) to justify the NLRC's reversal of the Labor Arbiter's factual conclusions. However, in both cases, there was no objection that the NLRC passed upon issues that were not raised on appeal.

On the other hand, it is already settled in jurisprudence that the NLRC may not rely on Article 218(c) of the Labor Code as

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[16] 352 Phil. 593, 604 (1998).

[17] G.R. Nos. 164518 & 164965, January 25, 2006, 480 SCRA 171, 181.

[18] G.R. No. 117890, September 18, 1997, 279 SCRA 312, 319-320.

[19] G.R. No. 163505, August 14, 2009, 596 SCRA 104, 111.

[20] G.R. No. 100926, March 13, 1992, 207 SCRA 218, 223-224.

[21] G.R. No. 182499, October 2, 2009, 602 SCRA 677, 684.

[22] G.R. No. 173076, October 10, 2007, 535 SCRA 518, 540.

basis for its act of reviewing an entire case above and beyond the sole legal question raised. In *Del Monte Philippines, Inc. v. National Labor Relations Commission*,[23] which was correctly pointed out by the Court of Appeals as a case that is on all fours with the case at bar, we held that the NLRC cannot, under the pretext of correcting serious errors of the Labor Arbiter in the interest of justice, expand its power of review beyond the issues elevated by an appellant, to wit:

> The issue presented for adjudication in this petition is whether or not there was grave abuse of discretion on the part of the NLRC in reversing the labor arbiter's decision.
>
> We rule in the affirmative.
>
> An appeal from a decision, award or order of the labor arbiter must be brought to the NLRC within ten (10) calendar days from receipt of such decision, award or order, otherwise, the same becomes final and executory [Art. 223, Labor Code; Rule VIII, Sec. 1(a), Revised Rules of the NLRC]. Moreover, the rules of the NLRC expressly provide that on appeal, the Commission shall limit itself *only to the specific issues that were elevated for review*, all other matters being final and executory [Rule VIII, Sec. 5(c), Revised Rules of the NLRC, italics supplied].
>
> In the present case, petitioner, aggrieved by the labor arbiter's decision ordering the extension of financial assistance to Galagar despite the finding that his termination was for just cause, specifically limited his appeal to a single legal question, *i.e.*, the validity of the award of financial assistance to an employee dismissed for pilfering company property. On the other hand, private respondent did *not* appeal.
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> **When petitioner limited the issue on appeal, necessarily the NLRC may review only that issue raised. All other matters, including the issue of the validity of private respondent's dismissal, are final. If private respondent wanted to challenge the finding of a valid dismissal, he should have appealed his case seasonably to the NLRC. By raising new issues in the reply to appeal, private respondent is in effect *appealing his case* although he has, in fact, allowed his case to become final by**

[23] G.R. No. 87371, August 6, 1990, 188 SCRA 370.

not appealing within the reglementary period. A reply/opposition to appeal cannot take the place of an appeal. Therefore, in this case, the dismissal of the complaint for illegal dismissal and the denial of the prayer for reinstatement, having become final, can no longer be reviewed.

Justifying its right to review the entire case and not just the sole legal question raised, public respondent relied on Article 218 (c) of the Labor Code. In the resolution denying the motion for reconsideration, public respondent quoted that portion which provides that the NLRC may in the exercise of its appellate power "correct, amend or waive any error, defect or irregularity whether in substance or in form."

Such reliance is misplaced.

The Labor Code provision, read in its entirety, states that the NLRC's power to correct errors, whether substantial or formal, may be exercised only in the determination of a question, matter or controversy *within its jurisdiction* [Art. 218, Labor Code]. Therefore, by considering the arguments and issues in the reply/ opposition to appeal which were not properly raised by timely appeal nor comprehended within the scope of the issue raised in petitioner's appeal, public respondent committed grave abuse of discretion amounting to excess of jurisdiction.

The contention that the NLRC may nevertheless look into other issues although not raised on appeal since it is not bound by technical rules of procedure, is likewise devoid of merit.

The law does not provide that the NLRC is totally free from "technical rules of procedure", but only that the rules of evidence prevailing in courts of law or equity shall not be controlling in proceedings before the NLRC [Art. 221, Labor Code]. This is hardly license for the NLRC to disregard and violate the implementing rules it has itself promulgated. Having done so, the NLRC committed grave abuse of discretion.[24] (Emphases supplied.)

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[24] *Id.* at 373-375.

The Court reiterated the foregoing ruling in *Torres v. National Labor Relations Commission*[25] and *United Placement International v. National Labor Relations Commission*.[26]

With regard to the second assignment of error which essentially involves the determination of factual issues, we are reminded that, in a petition under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Court.[27] However, where the findings of the NLRC contradict those of the Labor Arbiter, the Court, in the exercise of equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[28]

In the case at bar, we are constrained to reexamine the factual findings of the Labor Arbiter and the Court of Appeals, on one side, and of the NLRC, on the other, since they have divergent appreciations of the facts of this case.

Petitioner argues that the NLRC had established that there existed serious doubt between the evidence presented by the parties and, thus, the NLRC was correct in resolving the doubt in petitioner's favor following jurisprudence which states that if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[29]

The argument is unmeritorious.

This is not a case where there is mere doubt between the evidence of the parties; but the question here is, whether in the first place, there was substantial evidence for petitioner's claim

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[25] G.R. No. 90338, August 9, 1991, 200 SCRA 424.

[26] G.R. No. 102081-83, April 12, 1993, 221 SCRA 445.

[27] *Land Bank of the Philippines v. Chico*, G.R. No. 168453, March 13, 2009, 581 SCRA 226, 239.

[28] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 691-692.

[29] *Nicario v. National Labor Relations Commission*, 356 Phil. 936, 943 (1998).

in his complaint that he was actually dismissed from the service of respondents on November 26, 2001 (as alleged in his Complaint) or November 27, 2001 (as alleged in his Position Paper) when he purportedly refused to sign on November 26, 2001 blank project employment contracts.

It was incorrect for the NLRC to conclude that doubt exists between the evidence of both parties, thus, necessitating a ruling in favor of petitioner, because a careful examination of the records of this case would reveal that there was no adequate evidentiary support for petitioner's purported cause of action **— actual** illegal dismissal.

As shown by the records, inconsistent with his claim that he was actually dismissed on November 26 or 27, 2001, petitioner applied for and was granted a week long leave from November 29 to December 6, 2001. Petitioner did not deny that he indeed filed and signed the leave application form submitted by respondents as an attachment to their position paper. He merely claimed that he went on leave since he was not given any work assignment by the Company. However, the leave application form which bore his signature clearly stated that his reason for going on leave was "to settle [his] personal problem."[30]

Indeed, the NLRC gravely abused its discretion in reversing the Labor Arbiter's decision on mere conjectures and insubstantial grounds. In its Resolution dated May 9, 2003, the NLRC concluded that petitioner "was not allowed to work in his former position because he was already replaced"[31] merely on the basis of the handwritten notation that stated "Who will replace him?"[32] found on the Leave Application Form which petitioner himself filled-up and signed. The same notation could reasonably be interpreted as asking who will be substituting petitioner for the duration of his leave. It was speculative at best for the NLRC, in resolving respondents' motion for reconsideration, to rule

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[30] Records, Vol. 1, p. 31.

[31] *Id.*, Vol. 2, p. 22.

[32] *Id.*, Vol. 1, p. 31.

that the notation meant permanent replacement simply because the words "in the meantime" were lacking.[33] Contrary to the NLRC's interpretation of this notation, it, in fact, belied petitioner's contention that he was already dismissed or had no existing work assignment for, if so, there would be no need for him to file a leave application and for the employer to find someone to replace him. In any event, such notation cannot be credibly construed as substantial proof of petitioner's alleged illegal dismissal.

The NLRC further erroneously concluded that petitioner was illegally dismissed since during the several mandatory conferences between the parties, respondents purportedly never asked petitioner to go back to work without signing the alleged blank project employment contracts. From that circumstance, the NLRC inferred that respondents were no longer in need of petitioner's services. This rationalization is difficult to accept because it goes against the pronouncement of the Labor Arbiter in his Decision dated June 26, 2002. The Labor Arbiter who presided during the mandatory preliminary conferences plainly stated in his Decision that respondent corporation, through its representative during preliminary conference, denied the contract of project employment and confirmed the availability of the same employment to petitioner without any demotion in rank or diminution of benefits.[34] Thus, the Labor Arbiter concluded that "complainant's refusal to resume employment without valid cause and instead demanded separation pay and backwages is tantamount to resignation."[35]

To reiterate, petitioner did not appeal from the foregoing findings of the Labor Arbiter and he should be deemed to have accepted those factual findings. If he had truly felt aggrieved, petitioner himself would have questioned the Labor Arbiter's findings with the NLRC. Instead of pursuing all legal remedies to protect his rights, petitioner did not even file any opposition

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[33] *Id.*, Vol. 2, p. 59.

[34] *Rollo,* p. 26.

[35] *Id.*

or comment to respondents' Appeal Memorandum with the NLRC. He only participated in the proceedings again when the NLRC had already rendered a decision in his favor and he opposed respondents' motion for reconsideration of the NLRC decision.

In petitioner's Reply and Memorandum filed with this Court, petitioner's counsel belatedly offered the explanation that the appeal of the Labor Arbiter's decision was not filed for he failed to contact his client in time.[36] We find that we cannot give credence to this excuse. On record is a registry return card that showed that petitioner received his copy of the Labor Arbiter's decision by mail on July 19, 2002 even before his counsel did on August 1, 2002. It is difficult to believe that petitioner, after receiving the Labor Arbiter's decision, would not himself contact his lawyer regarding the same. Verily, it is settled in jurisprudence that a party that did not appeal a judgment is bound by the same and he cannot obtain from the appellate court any affirmative relief other than those granted, if any, in the decision of the lower court or administrative body.[37]

Also in connection with the second issue, petitioner argued in his Memorandum that, assuming without admitting that there was no illegal dismissal, the award of financial assistance was in accordance with existing jurisprudence pursuant to the principle of social justice. On this point, we agree with petitioner. *Eastern Shipping Lines, Inc v. Sedan*[38] bears certain parallelisms with the present controversy. In *Eastern*, the employer likewise questioned the grant of financial assistance on the ground that the employee's refusal to report back to work, despite being duly notified of the need for his service, is tantamount to voluntary resignation. In that case, however, we ruled:

We are not unmindful of the rule that financial assistance is allowed only in instances where the employee is validly dismissed for causes

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[36] *Id.* at 107 and 127.

[37] *Pison-Arceo Agricultural and Development Corporation v. National Labor Relations Commission, supra* note 18.

[38] G.R. No. 159354, April 7, 2006, 486 SCRA 565.

other than serious misconduct or those reflecting on his moral character. Neither are we unmindful of this Court's pronouncements in *Arc-Men Food Industries Corporation v. NLRC*, and *Lemery Savings and Loan Bank v. NLRC*, where the Court ruled that when there is no dismissal to speak of, an award of financial assistance is not in order.

But we must stress that this Court did allow, in several instances, the grant of financial assistance. In the words of Justice Sabino de Leon, Jr., now deceased, **financial assistance may be allowed as a measure of social justice and exceptional circumstances, and as an equitable concession.** The instant case equally **calls for balancing the interests of the employer with those of the worker**, if only to approximate what Justice Laurel calls justice in its secular sense.[39] (Emphases supplied.)

There appears to be no reason why petitioner, who has served respondent corporation for more than eight years without committing any infraction, cannot be extended the reasonable financial assistance of ₱18,000.00 as awarded by the Labor Arbiter on equity considerations.

We see no merit in respondents' contention that petitioner was guilty of insubordination or abandonment. Significantly, the Labor Arbiter made no finding that petitioner was guilty of insubordination or abandonment. It would appear that a few days after the expiration of his applied for leave, petitioner filed his complaint for illegal actual dismissal. Other than their self-serving allegations, respondents offered no proof that upon the expiration of petitioner's leave they directed petitioner to report to work but petitioner willfully failed to comply with said directive. On the contrary, in their own position paper, respondents prayed, aside from the dismissal of the complaint, that petitioner be directed by the Labor Arbiter to return to work and only when petitioner fails to comply with such order did they pray that petitioner be considered to have abandoned his work.[40] The Labor Arbiter did not grant this particular relief prayed for by respondents but instead awarded financial assistance to petitioner.

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[39] *Id.* at 574-575.

[40] Records, Vol. 1, p. 29.

In some cases where there is neither a dismissal nor abandonment, we have previously held that separation pay may be awarded under appropriate circumstances. Thus, in *Indophil Acrylic Mfg. Corp. v. National Labor Relations Commission*,[41] wherein the employer claimed that the employee had resigned/abandoned his work while the employee believed that he had been terminated, the Court held:

> We have turned a heedful eye on all the pleadings and evidence submitted by the parties and have concluded that there was NO DISMISSAL. Setting aside the other arguments of the parties which we find irrelevant, attention is called to the letter dated October 2, 1989 of petitioner's Personnel Manager, Mr. Nicasio B. Gaviola, to private respondent which the latter does not dispute, the full text of which reads:
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> > "Records show that you have not been reporting to (sic) work since September 16, 1989 up to this writing. For what reason, we are not aware.
> >
> > With this letter, you are required to report to this office and explain your unauthorized absences within three (3) days upon receipt hereof.
> >
> > Failure to report as required shall mean that we will consider you having resigned for abandonment of job." (sic)
>
> Clearly, therefore, petitioner had disregarded private respondent's previous resignation and still considers him its employee. It follows, that **at the time private respondent filed his complaint for illegal dismissal** before the Labor Arbiter, on October 4, 1989, **petitioner has not dismissed him**.
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> x x x x x x x x x
>
> **There being no dismissal** of private respondent by petitioner to speak of, **the *status quo* between them should be maintained** as a matter of course. **But there is no denying that their relationship must have been ruptured**. Taking into account the misconception of private respondent that he was dismissed and the October 2, 1989 letter of petitioner, the parties could have easily settled their controversy at the inception of the proceedings before the Labor

[41] G.R. No. 96488, September 27, 1993, 226 SCRA 723.

Arbiter. This they failed to do. Thus, in lieu of reinstatement, petitioner is ordered to **grant separation pay to private respondent**. x x x.[42] (Emphases supplied.)

Applying the above ratiocination by analogy and in accordance with equity, we uphold the Labor Arbiter's award of financial assistance as proper in this case.

Lastly, with regard to the third issue, petitioner argues that the former Special Twenty-Second Division of the Court of Appeals exhibited its bias and partiality when it issued a temporary restraining order (TRO) to stop and frustrate the enforcement of the decision rendered by the NLRC despite the fact that only one of its member associate justices granted the same without the concurrence of the two other member associate justices who merely concurred subsequently.

The argument is without merit.

In fact, the issue is hardly contentious. The granting of a TRO by a justice of the Court of Appeals who is the *ponente* of the case, even without the concurrence of the other associate justices assigned in the division, is allowed under Section 5, Rule VI of the 2002 Internal Rules of the Court of Appeals, to wit:

Section 5. *Action by a Justice.* - All members of the Division shall act upon an application for a temporary restraining order and writ of preliminary injunction. However, if the matter is of extreme urgency, and a Justice is absent, the two other justices shall act upon the application. **If only the *ponente* is present, then he shall act alone upon the application. The action** of the two Justices or of the *ponente* **shall however be submitted on the next working day to the absent member or members of the Division for ratification, modification or recall**. (Emphases supplied.)

The records of this case would attest to the urgency of the situation which necessitated the exceptionally prompt issuance of the TRO at issue. When the TRO was issued, the NLRC

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[42] *Id.* at 728-729; *see* also *Belaunzaran v. National Labor Relations Commission,* 333 Phil. 670 (1996).

Regional Arbitration Branch No. XI was already in the process of enforcing the assailed Resolution of the NLRC dated May 9, 2003 as evidenced by its issuance of a Notice of Hearing[43] for a pre-execution conference which was impelled by a motion made by petitioner.[44] The pre-execution conference was conducted as scheduled, thus, respondents filed with the Court of Appeals an Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.[45]

In view of the urgency of the situation and in order to prevent the petition of respondents from becoming moot and academic, Court of Appeals Associate Justice Romulo V. Borja, the Chairman of the Twenty-Second Division, issued a Resolution dated June 14, 2006, granting the TRO prayed for by respondents.[46] Nonetheless, the grant of said TRO was subsequently concurred in by the rest of the members of the Division, namely Associate Justices Antonio L. Villamor and Ramon R. Garcia, in their separate Resolutions both dated June 19, 2006.[47] Clearly, the issuance of the TRO at issue was in accordance with the 2002 Internal Rules of the Court of Appeals.

WHEREFORE, the petition is *PARTLY GRANTED*. The assailed Decision dated July 28, 2006 as well as the Resolution dated September 28, 2006 of the Court of Appeals in CA-G.R. SP No. 81703 are *AFFIRMED WITH THE MODIFICATION* that the award of financial assistance is *REINSTATED*. The Labor Arbiter's Decision dated June 26, 2002 is *AFFIRMED in toto*.

SO ORDERED.

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

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[43] *Rollo*, p. 89.

[44] *Id.* at 90-91.

[45] *Id.* at 92-95.

[46] *Id.* at 97-98.

[47] *Id.* at 100-101 and 102-103.

[*] Per Special Order No. 994 dated May 27, 2011.

FIRST DIVISION

[G.R. No. 175512. May 30, 2011]

VALLACAR TRANSIT, INC., *petitioner, vs.* **JOCELYN CATUBIG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; NOT A REQUISITE IN COMPLAINT FOR DAMAGES. — The 1997 Rules of Court, even prior to its amendment by A.M. No. 00-2-10, clearly provides that a pleading lacking proper verification is to be treated as an unsigned pleading which produces no legal effect. However, it also just as clearly states that "[e]xcept when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit." No such law or rule specifically requires that respondent's complaint for damages should have been verified. x x x In *Pajuyo v. Court of Appeals*, we already pointed out that: x x x the requirement on verification of a pleading is a formal and not a jurisdictional requisite. It is intended simply to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The party need not sign the verification. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification. In the case before us, we stress that as a general rule, a pleading need not be verified, unless there is a law or rule specifically requiring the same. x x x When circumstances warrant, the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served.

2. ID.; ID.; APPEAL; ONLY QUESTIONS OF LAW MAY BE RAISED. — [W]e restate the time honored principle that in a petition for review under Rule 45, only questions of law may be raised. It is not our function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction is limited to reviewing only errors of law that

may have been committed by the lower court. The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect. A question of law which we may pass upon must not involve an examination of the probative value of the evidence presented by the litigants. The above rule, however, admits of certain exceptions.

3. CIVIL LAW; DAMAGES; NEGLIGENCE; LIABILITY OF EMPLOYER FOR DAMAGES CAUSED BY EMPLOYEE; NOT APPLICABLE WHERE LIABILITY OF THE EMPLOYEE NOT ESTABLISHED, THE PROXIMATE CAUSE OF LIABILITY ATTRIBUTABLE SOLELY TO THE NEGLIGENCE OF THE VICTIM. — The issue of negligence is basically factual. x x x Respondent based her claim for damages on Article 2180, in relation to Article 2176, of the Civil Code. x x x There is merit in the argument of the petitioner that Article 2180 of the Civil Code — imputing fault or negligence on the part of the employer for the fault or negligence of its employee — does not apply to petitioner since the fault or negligence of its employee driver, Cabanilla, which would have made the latter liable for quasi-delict under Article 2176 of the Civil Code, has never been established by respondent. To the contrary, the totality of the evidence presented during trial shows that the proximate cause of the collision of the bus and motorcycle is attributable solely to the negligence of the driver of the motorcycle, Catubig. x x x The presumption that employers are negligent under Article 2180 of the Civil Code flows from the negligence of their employees. Having adjudged that the immediate and proximate cause of the collision resulting in Catubig's death was his own negligence, and there was no fault or negligence on Cabanilla's part, then such presumption of fault or negligence on the part of petitioner, as Cabanilla's employer, does not even arise. Thus, it is not even necessary to delve into the defense of petitioner that it exercised due diligence in the selection and supervision of Cabanilla as its employee driver.

APPEARANCES OF COUNSEL

Villaflores and Associates for petitioner.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review under Rule 45 of the Rules of Court is the Decision[1] dated November 17, 2005 and the Resolution[2] dated November 16, 2006 of the Court Appeals in CA-G.R. CV No. 66815, which modified the Decision[3] dated January 26, 2000 of the Regional Trial Court (RTC), Branch 30 of Dumaguete City, in Civil Case No. 11360, an action for recovery of damages based on Article 2180, in relation to Article 2176, of the Civil Code, filed by respondent Jocelyn Catubig against petitioner Vallacar Transit, Inc. While the RTC dismissed respondent's claim for damages, the Court of Appeals granted the same.

The undisputed facts are as follows:

Petitioner is engaged in the business of transportation and the franchise owner of a *Ceres Bulilit* bus with Plate No. T-0604-1348. Quirino C. Cabanilla (Cabanilla) is employed as a regular bus driver of petitioner.

On January 27, 1994, respondent's husband, Quintin Catubig, Jr. (Catubig), was on his way home from Dumaguete City riding in tandem on a motorcycle with his employee, Teddy Emperado (Emperado). Catubig was the one driving the motorcycle. While approaching a curve at kilometers 59 and 60, Catubig tried to overtake a slow moving ten-wheeler cargo truck by crossing-over to the opposite lane, which was then being traversed by the *Ceres Bulilit* bus driven by Cabanilla, headed for the opposite direction. When the two vehicles collided, Catubig and Emperado were thrown from the motorcycle. Catubig died on the spot where he was thrown, while Emperado died while being rushed to the hospital.

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[1] *Rollo*, pp. 58-68; penned by Associate Justice Enrico A. Lanzanas with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos, concurring.

[2] *Id.* at 70-71.

[3] *Id.* at 85-102.

On February 1, 1994, Cabanilla was charged with reckless imprudence resulting in double homicide in Criminal Case No. M-15-94 before the Municipal Circuit Trial Court (MCTC) of Manjuyod-Bindoy-Ayungon of the Province of Negros Oriental. After preliminary investigation, the MCTC issued a Resolution on December 22, 1994, dismissing the criminal charge against Cabanilla. It found that Cabanilla was not criminally liable for the deaths of Catubig and Emperado, because there was no negligence, not even contributory, on Cabanilla's part.

Thereafter, respondent filed before the RTC on July 19, 1995 a Complaint for Damages against petitioner, seeking actual, moral, and exemplary damages, in the total amount of ₱484,000.00, for the death of her husband, Catubig, based on Article 2180, in relation to Article 2176, of the Civil Code. Respondent alleged that petitioner is civilly liable because the latter's employee driver, Cabanilla, was reckless and negligent in driving the bus which collided with Catubig's motorcycle.

Petitioner, in its Answer with Counterclaim, contended that the proximate cause of the vehicular collision, which resulted in the deaths of Catubig and Emperado, was the sole negligence of Catubig when he imprudently overtook another vehicle at a curve and traversed the opposite lane of the road. As a special and affirmative defense, petitioner asked for the dismissal of respondent's complaint for not being verified and/or for failure to state a cause of action, as there was no allegation that petitioner was negligent in the selection or supervision of its employee driver.

In the Pre-Trial Order[4] dated June 10, 1997, the parties stipulated that the primary issue for trial was whether or not petitioner should be held liable for Catubig's death. Trial then ensued.

Police Officer (PO) 2 Robert B. Elnas (Elnas),[5] Emilio Espiritu (Espiritu),[6] Dr. Norberto Baldado, Jr. (Dr. Baldado),[7] Peter

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[4] Records, pp. 69-70.

[5] TSN, August 19, 1997.

[6] TSN, December 9, 1997, pp. 1-14.

[7] *Id.* at 14-22.

Cadimas (Cadimas),[8] and respondent[9] herself testified in support of respondent's complaint.

PO2 Elnas conducted an investigation of the collision incident. According to PO2 Elnas, the bus was running fast, at a speed of 100 kilometers per hour, when it collided with the motorcycle which was trying to overtake a truck. The collision occurred on the lane of the bus. Catubig was flung 21 meters away, and Emperado, 11 meters away, from the point of impact. The motorcycle was totaled; the chassis broke into three parts, and the front wheel and the steering wheel with the shock absorbers were found 26 meters and 38 meters, respectively, from the collision point. In contrast, only the front bumper of the bus suffered damage.

Cadimas personally witnessed the collision of the bus and the motorcycle. He recalled that he was then waiting for a ride to Dumaguete City and saw the *Ceres Bulilit* bus making a turn at a curve. Cadimas signaled the said bus to halt but it was running fast. Cadimas also recollected that there was a cargo truck running slow in the opposite direction of the bus. Cadimas next heard a thud and saw that the bus already collided with a motorcycle.

Espiritu was the photographer who took photographs of the scene of the accident. He identified the five photographs which he had taken of Catubig lying on the ground, bloodied; broken parts of the motorcycle; and the truck which Catubig tried to overtake.

Dr. Baldado was the medico-legal doctor who conducted the post-mortem examination of Catubig's body. He reported that Catubig suffered from the following injuries: laceration and fracture of the right leg; laceration and fracture of the left elbow; multiple abrasions in the abdominal area, left anterior chest wall, posterior right arm, and at the back of the left scapular area; and contusion-hematoma just above the neck. Dr. Baldado

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[8] TSN, August 18, 1998.

[9] TSN, July 28, 1997.

confirmed that Catubig was already dead when the latter was brought to the hospital, and that the vehicular accident could have caused Catubig's instantaneous death.

Respondent herself testified to substantiate the amount of damages she was trying to recover from petitioner for Catubig's death, such as Catubig's earning capacity; expenses incurred for the wake and burial of Catubig, as well as of Emperado; the cost of the motorcycle; and the costs of the legal services and fees respondent had incurred.

Respondent's documentary exhibits consisted of her and Catubig's Marriage Contract dated August 21, 1982, their two children's Certificate of Live Births, Catubig's College Diploma dated March 24, 1983, the list and receipts of the expenses for Catubig's burial, the sketch of the collision site prepared by PO2 Elnas, the excerpts from the police blotter, the photographs of the collision,[10] and the Post Mortem Report[11] on Catubig's cadaver prepared by Dr. Baldado.

In an Order[12] dated October 6, 1998, the RTC admitted all of respondent's aforementioned evidence.

On the other hand, Rosie C. Amahit (Amahit)[13] and Nunally Maypa (Maypa)[14] took the witness stand for petitioner.

Amahit was a Court Stenographer at the MCTC who took the transcript of stenographic notes (TSN) in Criminal Case No. M-15-94 against Cabanilla. Amahit verified that the document being presented by the defense in the present case was a true and correct copy of the TSN of the preliminary investigation held in Criminal Case No. M-15-94 on May 25, 1994, and another document was a duplicate original of the

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[10] Records, pp. 119-147.

[11] *Id.* at 7.

[12] *Id.* at 153.

[13] TSN, October 20, 1998.

[14] TSN, December 7, 1998 and December 17, 1998.

MCTC Resolution dated December 22, 1994 dismissing Criminal Case No. M-15-94.

Maypa is the Administrative and Personnel Manager at the Dumaguete branch of petitioner. He started working for petitioner on September 22, 1990 as a clerk at the Human Resources Development Department at the Central Office of petitioner in Bacolod City. Sometime in November 1993, he became an Administrative Assistant at the Dumaguete branch of petitioner; and in August 1995, he was promoted to his current position at the same branch.

While he was still an Administrative Assistant, Maypa was responsible for the hiring of personnel including drivers and conductors. Maypa explained that to be hired as a driver, an applicant should be 35 to 45 years old, have at least five years experience in driving big trucks, submit police, court, and medical clearances, and possess all the necessary requirements for driving a motor vehicle of more than 4,500 kilograms in gross weight such as a professional driver's license with a restriction code of 3. The applicant should also pass the initial interview, the actual driving and maintenance skills tests, and a written psychological examination involving defensive driving techniques. Upon passing these examinations, the applicant still had to go through a 15-day familiarization of the bus and road conditions before being deployed for work. Maypa, however, admitted that at the time of his appointment as Administrative Assistant at the Dumaguete branch, Cabanilla was already an employee driver of petitioner.

Maypa further explained the investigation and grievance procedure followed by petitioner in cases of vehicular accidents involving the latter's employee drivers. Maypa related that Cabanilla had been put on preventive suspension following the vehicular accident on January 27, 1994 involving the bus Cabanilla was driving and the motorcycle carrying Catubig and Emperado. Following an internal investigation of said accident conducted by petitioner, Cabanilla was declared not guilty of causing the same, for he had not been negligent.

Lastly, Maypa recounted the expenses petitioner incurred as a result of the present litigation.

The documentary exhibits of petitioner consisted of the TSN of the preliminary investigation in Criminal Case No. M-15-94 held on May 25, 1994 before the MCTC of Manjuyod-Bindoy-Ayungon of the Province of Negros Oriental; Resolution dated December 22, 1994 of the MCTC in the same case; and the Minutes dated February 17, 1994 of the Grievance Proceeding conducted by petitioner involving Cabanilla.[15]

The RTC, in its Order[16] dated November 12, 1999, admitted all the evidence presented by petitioner.

On January 26, 2000, the RTC promulgated its Decision favoring petitioner. Based on the sketch prepared by PO2 Elnas, which showed that "the point of impact x x x occurred beyond the center lane near a curve within the lane of the Ceres bus[;]"[17] plus, the testimonies of PO2 Elnas and Cadimas that the motorcycle recklessly tried to overtake a truck near a curve and encroached the opposite lane of the road, the RTC ruled that the proximate cause of the collision of the bus and motorcycle was the negligence of the driver of the motorcycle, Catubig. The RTC, moreover, was convinced through the testimony of Maypa, the Administrative and Personnel Manager of the Dumaguete branch of petitioner, that petitioner had exercised due diligence in the selection and supervision of its employee drivers, including Cabanilla.

After trial, the RTC concluded:

> WHEREFORE, finding preponderance of evidence in favor of the [herein petitioner] that the [herein respondent's] husband is the reckless and negligent driver and not the driver of the [petitioner], the above-entitled case is hereby ordered dismissed.
>
> [Petitioner's] counterclaim is also dismissed for lack of merit.[18]

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[15] Records, pp. 192-215.

[16] *Id.* at 222.

[17] *Id.* at 90.

[18] *Rollo*, p. 102.

Respondent appealed to the Court of Appeals. In its Decision dated November 17, 2005, the appellate court held that both Catubig and Cabanilla were negligent in driving their respective vehicles. Catubig, on one hand, failed to use reasonable care for his own safety and ignored the hazard when he tried to overtake a truck at a curve. Cabanilla, on the other hand, was running his vehicle at a high speed of 100 kilometers per hour. The Court of Appeals also brushed aside the defense of petitioner that it exercised the degree of diligence exacted by law in the conduct of its business. Maypa was not in a position to testify on the procedures followed by petitioner in hiring Cabanilla as an employee driver considering that Cabanilla was hired a year before Maypa assumed his post at the Dumaguete branch of petitioner.

Thus, the Court of Appeals decreed:

> WHEREFORE, based on the foregoing, the assailed decision of the trial court is modified. We rule that [herein petitioner] is equally liable for the accident in question which led to the deaths of Quintin Catubig, Jr. and Teddy Emperado and hereby award to the heirs of Quintin Catubig, Jr. the amount [of] ₱250,000.00 as full compensation for the death of the latter.[19]

The Court of Appeals denied the motion for reconsideration of petitioner in a Resolution dated November 16, 2006.

Hence, the instant Petition for Review.

Petitioner asserts that respondent's complaint for damages should be dismissed for the latter's failure to verify the same. The certification against forum shopping attached to the complaint, signed by respondent, is not a valid substitute for respondent's verification that she "has read the pleading and that the allegations therein are true and correct of her personal knowledge or based on authentic records."[20] Petitioner cited jurisprudence in which the Court ruled that a pleading lacking

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[19] *Id.* at 67-68.

[20] *Id.* at 23.

proper verification is treated as an unsigned pleading, which produces no legal effect under Section 3, Rule 7 of the Rules of Court.

Petitioner also denies any vicarious or imputed liability under Article 2180, in relation to Article 2176, of the Civil Code. According to petitioner, respondent failed to prove the culpability of Cabanilla, the employee driver of petitioner. There are already two trial court decisions (*i.e.*, the Resolution dated December 22, 1994 of the MCTC of Manjuyod-Bindoy-Ayungon of the Province of Negros Oriental in Criminal Case No. M-15-94 and the Decision dated January 26, 2000 of the RTC in the instant civil suit) explicitly ruling that the proximate cause of the collision was Catubig's reckless and negligent act. Thus, without the fault or negligence of its employee driver, no liability at all could be imputed upon petitioner.

Petitioner additionally argues, without conceding any fault or liability, that the award by the Court of Appeals in respondent's favor of the lump sum amount of ₱250,000.00 as total death indemnity lacks factual and legal basis. Respondent's evidence to prove actual or compensatory damages are all self-serving, which are either inadmissible in evidence or devoid of probative value. The award of moral and exemplary damages is likewise contrary to the ruling of the appellate court that Catubig should be equally held liable for his own death.

Respondent maintains that the Court of Appeals correctly adjudged petitioner to be liable for Catubig's death and that the appellate court had already duly passed upon all the issues raised in the petition at bar.

The petition is meritorious.

At the outset, we find no procedural defect that would have warranted the outright dismissal of respondent's complaint.

Respondent filed her complaint for damages against petitioner on July 19, 1995, when the 1964 Rules of Court was still in effect. Rule 7, Section 6 of the 1964 Rules of Court provided:

SEC. 6. *Verification*. — A pleading is verified only by a affidavit stating that the person verifying has read the pleading and that the allegations thereof are ture of his own knowledge.

Verifications based on "information and belief," or upon "knowledge, information and belief," shall be deemed insufficient.

On July 1, 1997, the new rules on civil procedure took effect. The foregoing provision was carried on, with a few amendments, as Rule 7, Section 4 of the 1997 Rules of Court, *viz*:

SEC. 4. *Verification*. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading."

The same provision was again amended by A.M. No. 00-2-10, which became effective on May 1, 2000. It now reads:

SEC. 4. *Verification*. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

The 1997 Rules of Court, even prior to its amendment by A.M. No. 00-2-10, clearly provides that a pleading lacking proper verification is to be treated as an unsigned pleading which produces no legal effect. However, it also just as clearly states that "[e]xcept when otherwise specifically required by law or

rule, pleadings need not be under oath, verified or accompanied by affidavit." No such law or rule specifically requires that respondent's complaint for damages should have been verified.

Although parties would often submit a joint verification and certificate against forum shopping, the two are different.

In *Pajuyo v. Court of Appeals*,[21] we already pointed out that:

> A party's failure to sign the certification against forum shopping is different from the party's failure to sign personally the verification. The certificate of non-forum shopping must be signed by the party, and not by counsel. The certification of counsel renders the petition defective.
>
> On the other hand, the requirement on verification of a pleading is a formal and not a jurisdictional requisite. It is intended simply to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The party need not sign the verification. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.[22]

In the case before us, we stress that as a general rule, a pleading need not be verified, unless there is a law or rule specifically requiring the same. Examples of pleadings that require verification are: (1) all pleadings filed in civil cases under the 1991 Revised Rules on Summary Procedure; (2) petition for review from the Regional Trial Court to the Supreme Court raising only questions of law under Rule 41, Section 2; (3) petition for review of the decision of the Regional Trial Court to the Court of Appeals under Rule 42, Section 1; (4) petition for review from quasi-judicial bodies to the Court of Appeals under Rule 43, Section 5; (5) petition for review before the Supreme Court under Rule 45, Section 1; (6) petition for annulment of judgments or final orders and resolutions under Rule 47, Section 4; (7) complaint for injunction under Rule 58, Section 4; (8) application for

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[21] G.R. No. 146364, June 3, 2004, 430 SCRA 492.

[22] *Id.* at 508-509.

preliminary injunction or temporary restraining order under Rule 58, Section 4; (9) application for appointment of a receiver under Rule 59, Section 1; (10) application for support *pendente lite* under Rule 61, Section 1; (11) petition for *certiorari* against the judgments, final orders or resolutions of constitutional commissions under Rule 64, Section 2; (12) petition for *certiorari*, *prohibition*, and *mandamus* under Rule 65, Sections 1 to 3; (13) petition for *quo warranto* under Rule 66, Section 1; (14) complaint for expropriation under Rule 67, Section 1; (15) petition for indirect contempt under Rule 71, Section 4, all from the 1997 Rules of Court; (16) all complaints or petitions involving intra-corporate controversies under the Interim Rules of Procedure on Intra-Corporate Controversies; (17) complaint or petition for rehabilitation and suspension of payment under the Interim Rules on Corporate Rehabilitation; and (18) petition for declaration of absolute nullity of void marriages and annulment of voidable marriages as well as petition for summary proceedings under the Family Code.

In contrast, all complaints, petitions, applications, and other initiatory pleadings must be accompanied by a certificate against forum shopping, first prescribed by Administrative Circular No. 04-94, which took effect on April 1, 1994, then later on by Rule 7, Section 5 of the 1997 Rules of Court. It is not disputed herein that respondent's complaint for damages was accompanied by such a certificate.

In addition, verification, like in most cases required by the rules of procedure, is a formal, not jurisdictional, requirement, and mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. When circumstances warrant, the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served.[23]

We agree with petitioner, nonetheless, that respondent was unable to prove imputable negligence on the part of petitioner.

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[23] *Jimenez vda. De Gabriel v. Court of Appeals*, 332 Phil. 157, 165 (1996).

Prefatorily, we restate the time honored principle that in a petition for review under Rule 45, only questions of law may be raised. It is not our function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction is limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect. A question of law which we may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.[24]

The above rule, however, admits of certain exceptions. The findings of fact of the Court of Appeals are generally conclusive but may be reviewed when: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.[25]

The issue of negligence is basically factual.[26] Evidently, in this case, the RTC and the Court of Appeals have contradictory

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[24] *Land Bank of the Philippines v. Monet's Export and Manufacturing Corporation*, 493 Phil. 327, 338 (2005).

[25] *Id.* at 338-339.

[26] *Pestaño v. Sumayang*, 400 Phil. 740, 749 (2000).

factual findings: the former found that Catubig alone was negligent, while the latter adjudged that both Catubig and petitioner were negligent.

Respondent based her claim for damages on Article 2180, in relation to Article 2176, of the Civil Code, which read:

> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.
>
> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those persons for whom one is responsible.
>
> x x x x x x x x x
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> x x x x x x x x x
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

There is merit in the argument of the petitioner that Article 2180 of the Civil Code — imputing fault or negligence on the part of the employer for the fault or negligence of its employee — does not apply to petitioner since the fault or negligence of its employee driver, Cabanilla, which would have made the latter liable for quasi-delict under Article 2176 of the Civil Code, has never been established by respondent. To the contrary, the totality of the evidence presented during trial shows that the proximate cause of the collision of the bus and motorcycle is attributable solely to the negligence of the driver of the motorcycle, Catubig.

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening

cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.[27]

The RTC concisely articulated and aptly concluded that Catubig's overtaking of a slow-moving truck ahead of him, while approaching a curve on the highway, was the immediate and proximate cause of the collision which led to his own death, to wit:

> **Based on the evidence on record, it is crystal clear that the immediate and proximate cause of the collision is the reckless and negligent act of Quintin Catubig, Jr. and not because the Ceres Bus was running very fast. Even if the Ceres Bus is running very fast on its lane, it could not have caused the collision if not for the fact that Quintin Catubig, Jr. tried to overtake a cargo truck and encroached on the lane traversed by the Ceres Bus while approaching a curve.** As the driver of the motorcycle, Quintin Catubig, Jr. has not observed reasonable care and caution in driving his motorcycle which an ordinary prudent driver would have done under the circumstances. Recklessness on the part of Quintin Catubig, Jr. is evident when he tried to overtake a cargo truck while approaching a curve in Barangay Donggo-an, Bolisong, Manjuyod, Negros Oriental. Overtaking is not allowed while approaching a curve in the highway (Section 41(b), Republic Act [No.] 4136, as amended). Passing another vehicle proceeding on the same direction should only be resorted to by a driver if the highway is free from incoming vehicle to permit such overtaking to be made in safety (Section 41(a), Republic Act [No.] 4136). **The collision happened because of the recklessness**

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[27] *Ramos v. C.O.L. Realty Corporation*, G.R. No. 184905, August 28, 2009, 597 SCRA 526, 535-536.

and carelessness of [herein respondent's] husband who was overtaking a cargo truck while approaching a curve. Overtaking another vehicle while approaching a curve constitute reckless driving penalized not only under Section 48 of Republic Act [No.] 4136 but also under Article 365 of the Revised Penal Code.

The Court commiserate with the [respondent] for the untimely death of her husband. However, the Court as dispenser of justice has to apply the law based on the facts of the case. Not having proved by preponderance of evidence that the proximate cause of the collision is the negligence of the driver of the Ceres bus, this Court has no other option but to dismiss this case.[28] (Emphases supplied.)

The testimonies of prosecution witnesses Cadimas and PO2 Elnas that Cabanilla was driving the bus at a reckless speed when the collision occurred lack probative value.

We are unable to establish the actual speed of the bus from Cadimas's testimony for he merely stated that the bus did not stop when he tried to flag it down because it was "running very fast."[29]

PO2 Elnas, on the other hand, made inconsistent statements as to the actual speed of the bus at the time of the collision. During the preliminary investigation in Criminal Case No. M-15-94 before the MCTC, PO2 Elnas refused to give testimony as to the speed of either the bus or the motorcycle at the time of the collision and an opinion as to who was at fault.[30] But during the trial of the present case before the RTC, PO2 Elnas

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[28] *Rollo*, p. 101.

[29] TSN, August 18, 1998, p. 3.

[30] Excerpts from the TSN dated May 25, 1994, in Criminal Case No. M-15-94, are as follows:

Q (To the witness) The sketch which you made is only a representation of what you actually saw at the place of the incident, is that true?
A Yes, your Honor.
Q You cannot therefore testify as to the speed of the two (2) vehicles at the time that they collided?
A Yes, your Honor.
Q You can't also form an opinion as to who was at fault, is that correct?
A Yes. (Records, p. 205.)

claimed that he was told by Cabanilla that the latter was driving the bus at the speed of around 100 kilometers per hour.[31]

As the RTC noted, Cadimas and PO2 Elnas both pointed out that the motorcycle encroached the lane of the bus when it tried to overtake, while nearing a curve, a truck ahead of it, consistent with the fact that the point of impact actually happened within the lane traversed by the bus. It would be more reasonable to assume then that it was Catubig who was driving his motorcycle at high speed because to overtake the truck ahead of him, he necessarily had to drive faster than the truck. Catubig should have also avoided overtaking the vehicle ahead of him as the curvature on the road could have obstructed his vision of the oncoming vehicles from the opposite lane.

The evidence shows that the driver of the bus, Cabanilla, was driving his vehicle along the proper lane, while the driver of the motorcycle, Catubig, had overtaken a vehicle ahead of him as he was approaching a curvature on the road, in disregard of the provision of the law on reckless driving, at the risk of his life and that of his employee, Emperado.

The presumption that employers are negligent under Article 2180 of the Civil Code flows from the negligence of their employees.[32] Having adjudged that the immediate and proximate cause of the collision resulting in Catubig's death was his own

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[31] Pertinent portion of TSN dated August 19, 1997, pp. 21-22, are quoted as follows,:

Q: Did you ask the driver of the Ceres bus its speed immediately before the collision?
A: Yes.
Q: What was the answer of the driver of the Ceres bus?
A: As far as I could remember, he was [running] very fast, a speed of around 100 kilometers per hour.
Q: That is the speed of the Ceres bus?
A: Yes.
Q: Why is it that that is not reflected in your police blotter?
A: Because we were busy with the deceased persons and the sketching of the place of the incident.

[32] *McKee v. Intermediate Appellate Court*, G.R. No. 68102, July 16, 1992, 211 SCRA 517, 544.

negligence, and there was no fault or negligence on Cabanilla's part, then such presumption of fault or negligence on the part of petitioner, as Cabanilla's employer, does not even arise. Thus, it is not even necessary to delve into the defense of petitioner that it exercised due diligence in the selection and supervision of Cabanilla as its employee driver.

WHEREFORE, premises considered, the petition is *GRANTED*. The Decision dated November 17, 2005 and Resolution dated November 16, 2006 of the Court Appeals in CA-G.R. CV No. 66815 are *SET ASIDE* and the Decision dated January 26, 2000 of the Regional Trial Court, Branch 30 of Dumaguete City, dismissing Civil Case No. 11360 is *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177191. May 30, 2011]

MICHAEL SAN JUAN *y* CRUZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; UNIQUE NATURE OF CRIMINAL CASE THROWS THE WHOLE CASE OPEN FOR REVIEW. — It is the unique nature of an appeal in a criminal case that the appeal throws the whole case open for review and it is the duty of the appellate

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[*] Per Special Order No. 994 dated May 27, 2011.

court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002; TRANSPORT OF METHYLAMPHETAMINE HYDROCHLORIDE; NOT PRESENT WHERE THE MOVEMENT OF DANGEROUS DRUG FROM ONE PLACE TO ANOTHER WAS NOT ESTABLISHED. — Petitioner was charged with and convicted of violation of Section 5, Article II of R.A. No. 9165. x x x Petitioner was charged specifically with the transport of methylamphetamine hydrochloride or *shabu*. x x x "Transport" as used under the Dangerous Drugs Act is defined to mean: "to carry or convey from one place to another." The essential element of the charge is the movement of the dangerous drug from one place to another. In the present case, although petitioner and his co-accused were arrested inside a car, the car was not in transit when they were accosted. From the facts found by the RTC, that car was parked and stationary. The prosecution failed to show that any distance was travelled by petitioner with the drugs in his possession. The conclusion that petitioner transported the drugs merely because he was in a motor vehicle when he was accosted with the drugs has no basis and is mere speculation. The rule is clear that the guilt of the accused must be proved with moral certainty. All doubts should be resolved in favor of the accused. It is the responsibility of the prosecution to prove the element of transport of dangerous drugs, namely, that transportation had taken place, or that the accused had moved the drugs some distance.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED; EXCEPTIONS; IN CASE OF MISAPPRECIATION OF FACTS. — Well-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court. In such a case, the scales of justice must tilt in favor of an accused, considering that he stands to lose his liberty by virtue of his conviction. The Court must be satisfied that the factual findings and conclusions of the trial court leading to an accused's conviction has satisfied the standard of proof beyond reasonable doubt.

4. CRIMINAL LAW; CONSPIRACY; NOT APPRECIATED IN THE ABSENCE OF EVIDENCE OF AGREEMENT OR

COOPERATION TO COMMIT THE OFFENSE. — Having charged that petitioner acted in conspiracy with Pineda and Coderes, it was incumbent upon the prosecution to prove that all the accused had come to an agreement concerning the transport of *shabu* and had decided to execute the agreement. x x x In this case, the prosecution, other than its bare assertions that petitioner and accused conspired in transporting the *shabu*, failed to establish that there was indeed a conscious criminal design existing between and among petitioner and accused to commit the said offense. True, petitioner was in the driver's seat of the parked car on that fateful day of December 15, 2003, but it could not be deduced that he was even aware that Pineda had with him two plastic containers containing shabu, nor did he accord any form of assistance to Pineda. According to PO2 Jovenir, these plastic containers were placed inside a bag and Pineda tried to conceal these under his seat. These facts, standing alone, cannot give rise to a presumption of conspiracy. Certainly, conspiracy must be proven through clear and convincing evidence. Indeed, it is possible that petitioner was telling the truth when he said that he merely met with accused in order to offer the car for sale, as that was his part-time business. It bears stressing that conspiracy requires the same degree of proof required to establish the crime — proof beyond reasonable doubt. Thus, mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy. In fine, the prosecution failed to discharge its burden to prove and establish conspiracy. Necessarily, petitioner should be held accountable only for his alleged respective participation in the commission of the offense.

5. ID.; DANGEROUS DRUGS ACT OF 2002; CHAIN OF CUSTODY; MARKING OF SEIZED DRUGS IMMEDIATELY AFTER SEIZURE, CRUCIAL. — Neither was it established that the two sachets were actually marked in the presence of petitioner by SPO2 Aure himself. *Apropos* is our ruling in *People v. Coreche*: Crucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after* they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate

> the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.
> x x x

APPEARANCES OF COUNSEL

Herminio F. Valerio for petitioners.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated December 21, 2006, which affirmed the decision[3] of the Regional Trial Court (RTC) of Pasay City, dated July 8, 2004, finding petitioner Michael San Juan *y* Cruz (petitioner), together with Rolando Pineda *y* Robledo (Pineda), Cynthia Coderes *y* Habla (Coderes), guilty beyond reasonable doubt for violation of Section 5,[4] Article II of Republic Act (R.A.) No. 9165.[5]

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[1] *Rollo*, pp. 29-48.

[2] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo, concurring; *id.* at 51-68.

[3] *Id.* at 74-90.

[4] 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.

[5] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE

The Facts

Petitioner, together with Pineda and Coderes (accused), was charged with the crime of Transporting Illegal Drugs in an Information[6] dated December 16, 2003, which reads:

> That on or about the 15th day of December 2003, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without authority of law, did then and there wilfully, unlawfully and feloniously transport a total of 978.7 grams of Methylamphetamine Hydrochloride (*shabu*) a dangerous drug[s].
>
> Contrary to law.

When arraigned on February 17, 2004, the three accused entered separate pleas of not guilty to the offense charged.[7] During the pre-trial, the three accused did not enter into any stipulation or admission of facts with the prosecution.[8] Thereafter, trial on the merits ensued. In the course of the trial, two varying versions arose.

Version of the Prosecution

On December 15, 2003, at about 10:00 a.m., elements of the Intelligence Unit of the Pasay City Police, namely: Police Inspector Grant Golod (P/Insp. Golod), Police Officer (PO)3 Zoilo Manalo (PO3 Manalo), and PO2 Roberto Jovenir (PO2 Jovenir), together with Senior Police Officer (SPO)2 Soriño Aure (SPO2 Aure), PO2 Froilan Dayawon (PO2 Dayawon), PO2 Carlito Bintulan, and PO1 Angel dela Cruz, who were all in civilian attire, conducted surveillance, monitoring, and intelligence

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KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Also known as the "Comprehensive Dangerous Drugs Act of 2002." Approved on June 7, 2002.

[6] Records, p. 2.

[7] *Id.* at 39.

[8] *Id.* at 44.

gathering to arrest violators of the law along Senator Gil Puyat (formerly Buendia) Avenue in Pasay City due to numerous reports of rampant snatching, robbery, and holdup in the area. P/Insp. Golod and PO3 Manalo boarded a vehicle driven by PO2 Jovenir, while SPO2 Aure and the rest of the officers occupied another.[9]

While cruising along Senator Gil Puyat Avenue, the police officers noticed a blue Toyota Corolla 4-door sedan car (car), which had no license plate at its rear, parked in front of a liquor store. Thus, P/Insp. Golod called the other group using his cellphone, and informed them that they should check the said car.[10]

SPO2 Aure and PO2 Dayawon approached the driver side of the car, whereas PO3 Manalo and PO2 Jovenir approached the passenger side thereof. SPO2 Aure knocked on the car's window. When the driver, later identified as petitioner, opened the car's windows, SPO2 Aure asked for the Official Receipt (OR) and the Certificate of Registration (CR) of the car but none was produced. SPO2 Aure was about to accost petitioner, when a commotion ensued at the passenger side[11] of the car because PO2 Jovenir noticed that the passenger, later identified as Pineda, was trying to hide a plastic bag under his seat, the contents of which accidentally came out (*lumawit*). PO2 Jovenir opened the door, held Pineda's right hand and asked him, "*Ano yan*?" The contents were discovered to be plastic containers containing white crystalline substance which the police officers suspected to be *shabu*[12] so much so that PO2 Jovenir uttered, "*Pare, may dala to, shabu, positive*."[13] At this juncture, Pineda said, "*Sir, baka pwede nating ayusin ito*."[14]

SPO2 Aure instructed petitioner to alight. When he was frisked, SPO2 Aure recovered two small plastic sachets containing white

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[9] TSN, March 3, 2004, pp. 7-11.

[10] *Id.*

[11] TSN, March 11, 2004, pp. 9-14.

[12] TSN, March 3, 2004, pp. 16-17.

[13] TSN, March 11, 2004, p. 37.

[14] TSN, March 3, 2004, p. 17.

crystalline substance. SPO2 Aure turned over these sachets to PO2 Jovenir. At the back seat of the car was another passenger who was later identified as Coderes. Upon questioning, Coderes replied that the owner of the *shabu* was a certain Mike who was waiting for the accused at her condominium unit at Unit 1225, 12th Floor of the Cityland Condominium on Dela Rosa Street, Makati City (Cityland Condominium).[15]

Immediately thereafter, the police officers, with the accused, went to Cityland Condominium for a follow-up operation. Upon arrival, P/Insp. Golod coordinated with the Security Officer of the said condominium, while SPO2 Aure, PO3 Manalo, and PO2 Jovenir were led by Coderes to Unit 1225. SPO2 Aure, PO3 Manalo, PO2 Jovenir allowed Coderes to walk ahead of them. Upon reaching Unit 1225, Coderes pretended to knock on the door but the police officers did not notice that she had a key with her. Coderes immediately opened the door, went inside the unit and locked herself in. The police officers forcibly opened the door by kicking it and rearrested Coderes. They then searched the unit for "Mike," but they discovered that Coderes was the only one inside. From Cityland Condominium, the police officers brought all the accused to the Pasay City Police Headquarters for investigation.[16]

Subsequently, upon examination, the two plastic containers and the two plastic sachets containing white crystalline substance were positively identified as *shabu*.[17] The supposed testimony of Engineer Richard Allan B. Mangalip, Forensic Chemical Officer, before the RTC, was the subject of stipulation by the parties.[18]

Version of the Defense

Pineda and Coderes denied that they were arrested while on board the car and that they possessed the illegal drugs. They

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[15] TSN, March 11, 2004, pp. 15-21.

[16] *Id.* at 21-30.

[17] Records, p. 12.

[18] TSN, March 11, 2004, pp. 59-65.

claimed that, on December 15, 2003, between 9:00 and 10:00 a.m., they were inside Unit 1225 and were preparing to go out shopping; that somebody knocked on the door; and Pineda asked who that person was, but there was no reply; that the door was forcibly opened and armed men gained entry and ordered them to lie down on the bed face down; that the men searched the unit and took their personal belongings and money; that they later recognized the said armed men as Pasay City police officers; that they presented no warrant of arrest and/or search warrant; that they were brought to separate rooms in Sinta Court Motel (Sinta Motel) at the corner of F.B. Harrison and EDSA Extension in Pasay City; that the police officers demanded money from them in the amount of ₱500,000.00 in exchange for their release; and that they were brought to the Criminal Investigation Division (CID) of the Pasay City Police Headquarters at around 7:00 or 8:00 p.m.[19] On that day, Coderes only saw petitioner at the CID.[20]

On June 2, 2004, petitioner testified that he knew Pineda because he is the godfather of one of Pineda's children; that he also knew Coderes because she is the live-in partner of Pineda; that around 10:00 a.m. on December 15, 2003, he was at the lobby of the Cityland Condominium and was waiting for an elevator in order to see Pineda and Coderes; that upon riding the elevator, three (3) male persons joined him who were all in civilian attire and whom he later came to know to be Pasay City police officers, namely: PO2 Jovenir and P/Insp. Golod and another one whom he failed to identify; that one of them pressed the number four (4) button of the elevator; and that at the time, petitioner was calling Pineda through his cellular phone, but, there was no signal.[21]

Petitioner also related that P/Insp. Golod suddenly held petitioner's hand which was holding the cellular phone, and PO2 Jovenir punched him in the stomach and was told to peacefully

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[19] TSN, April 14, 2004, pp. 11-43. Please also see TSN, May 6, 2004, pp. 3-22.

[20] TSN, May 6, 2004, p. 19.

[21] TSN, June 22, 2004, pp. 7-11.

go with them so that he would not be hurt; that they did not introduce themselves to him; that the elevator opened on the fourth floor, and the person who pressed the number four (4) button went out and the elevator went down; that when the elevator reached the ground floor, P/Insp. Golod pulled him towards the lobby, while PO2 Jovenir remained by the door of the elevator; that there was another man who held him and he was pulled out of the Cityland Condominium; that he was brought to a parked white car, handcuffed at his back, and made to board the backseat of the said white car with his face down, and thereafter the car left; that he did not know what kind of car it was because he was ordered to bow down and not to look out, and they were always holding his head; that he was with P/Insp. Golod and the other policemen inside the white car; that he was brought to Sinta Motel; that he was brought inside a room, and frisked, and the police officers took from him his watch, his wallet and the money inside his wallet, the car key, and the parking ticket; that he was asked if he knew Pineda and Coderes to which he assented; that when he was asked who was the owner of the car key, he said that the car did not belong to him as it was just being offered for sale; that in going to the Cityland Condominium, he used the car; that when he was brought out of the Cityland Condominium, the car was left at the parking area of the Cityland Condominium; that, as a car sales agent, he made sure that the OR, CR, and plate number of the car were complete; that the car had a rear plate number; that P/Insp. Golod demanded that petitioner pay ₱200,000.00 in exchange for his release; that he stayed at the Sinta Motel for five (5) hours before he was brought to the CID; that he stayed at the CID for two (2) hours and he was made to sit on a chair; that after two (2) hours he was brought inside a room of the same building where he stayed until the following day; that on the following day, the accused were brought to Fort Bonifacio for drug testing; and that they were brought back to the CID and, in the afternoon, petitioner was brought to the Pasay City Jail. While inside the CID, petitioner saw the car parked at the back of the Pasay City Hall.[22]

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[22] *Id.* at 11-63.

The RTC's Ruling

The RTC gave greater weight to the evidence presented by the prosecution, and found the testimonies of the arresting officers more credible and worthy of belief. Thus, in its decision dated July 8, 2004, the RTC convicted petitioner, Pineda, and Coderes of the crime charged, the dispositive portion of which reads:

> WHEREFORE, in the light of the foregoing premises and considerations, this Court hereby renders judgment finding the three accused Rolando Pineda *y* Robledo, Cynthia Coderes *y* Habla and Michael San Juan *y* Cruz all GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of R.A. No. 9165 and they are hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Php 500,000.00 each, plus costs.
>
> The 978.7 grams of Methylamphetamine Hydrochloride (*shabu*) involved in this case is hereby declared forfeited in favor of the Government and ordered to be turned-over to the Philippine Drug Enforcement Agency for its appropriate disposition in accordance with the provisions of the Comprehensive Dangerous Drugs Law.
>
> SO ORDERED.[23]

Aggrieved, the accused, through their respective counsels, appealed their case.[24]

The CA's Ruling

On December 21, 2006, the CA affirmed the ruling of the RTC. The CA opined that the inconsistencies pointed out by the defense were unimportant matters which do not delve into the material elements of the crime. The CA also relied on the presumption that the aforementioned police officers regularly performed their official functions. Thus, the CA disposed of the case in this wise:

> WHEREFORE, premises considered, the Decision dated July 8, 2004 of the Regional Trial Court, Branch 116 of Pasay City convicting accused-appellants Rolando R. Pineda, Cynthia H. Coderes and

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[23] *Supra* note 3, at 89-90.

[24] Records, pp. 237-238, 241-242.

Michael C. San Juan of violation of Section 5, Rule II of Republic Act No. 9165 or the Dangerous Drugs Act of 2002 in Criminal Case No. 03-2804CFM is hereby AFFIRMED.

SO ORDERED.[25]

Undaunted, petitioner alone filed a Motion for Reconsideration[26] which the CA, however, denied in its Resolution[27] dated March 21, 2007.

Of the three accused, only petitioner sought recourse with this Court through this Petition based on the following grounds:

1. THE HONORABLE APPELLATE COURT COMMITTED REVERSIBLE ERROR IN ADMITTING AND CONSIDERING THE PROSECUTION'S EVIDENCE DESPITE THE GLARING VIOLATIONS OF PETITIONER'S CONSTITUTIONAL RIGHTS AND R.A. 9165 MAKING SUCH EVIDENCE INADMISSIBLE.
2. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE DECISION OF CONVICTION OF THE TRIAL COURT DESPITE THE ADMITTED CONFLICTING AND INCONSISTENT TESTIMONIES OF ALL THE PROSECUTION WITNESSES WHICH CLEARLY PUTS THE CONVICTION IN DOUBT.
3. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE TRIAL COURT DESPITE THE LATTER'S CLEAR VIOLATION OF ESTABLISHED PROCEDURAL RULES AND CONSTITUTIONAL RIGHTS ON DUE PROCESS BY NOT ALLOWING PETITIONER TO PRESENT A MATERIAL WITNESS.[28]

Petitioner avers that the police officers initially apprehended the accused for a mere traffic violation; hence, there was no

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[25] *Supra* note 2, at 67.

[26] CA *rollo*, pp. 247-266.

[27] *Id.* at 273-274.

[28] *Rollo*, p. 35.

justifiable reason for them to search the car in the absence of any search warrant and/or the fact that the accused were not caught in *flagrante delicto*. The police officers also failed to appraise the accused of their rights. Petitioner points out that the follow-up operation conducted in Unit 1225 was unlawful as the police officers were not armed with any search warrant, and they simply relied on the alleged information given by Coderes. In view of the numerous, conflicting, and material inconsistencies in the respective testimonies of PO2 Jovenir, SPO2 Aure and P/Insp. Golod, petitioner submits that such would lend credence to the unanimous claim of all the accused that they were arrested in Cityland Condominium in Makati City and not on board the car parked in Pasay City. Moreover, petitioner, invoking R.A. No. 9165, asseverates that the police officers did not follow the procedure prescribed by law. He questions the identity of the illegal drugs alleged to have been seized from the accused and those presented before the RTC because instead of proceeding immediately to the Pasay City Police Headquarters, the police officers went to the Cityland Condominium, making planting of evidence highly probable.[29] The police officers also failed to make any inventory of the alleged prohibited drugs in clear violation of the law.[30]

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG), argues that only questions of law may be entertained by this Court. The issue of whether petitioner was apprehended in the act of violating R.A. No. 9165 is factual in nature. The OSG claims that petitioner was lawfully caught in *flagrante delicto,* thus, any evidence seized from him may be used against him. Citing the CA's ruling, the OSG avers that the police officers were clear, positive, and categorical in their testimonies against the accused. Lastly, the OSG invokes the rule that findings of fact of the trial court, when affirmed by the CA, are accorded not only respect, but also finality by this Court.[31]

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[29] *Id*.

[30] Reply; *id.* at 911-916.

[31] Comment; *id.* at 899-907.

Our Ruling

The instant Petition is impressed with merit.

It is the unique nature of an appeal in a criminal case that the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[32] We find the Petition meritorious on the basis of such review.

Petitioner was charged with and convicted of violation of Section 5, Article II of R.A. No. 9165. Said provision of law reads, as follows:

> 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 such transactions.[33]

Petitioner was charged specifically with the transport of methylamphetamine hydrochloride or *shabu*. However, upon review of the facts of the case, no such transport was proven to have taken place.

The RTC found that petitioner and accused were seen in a parked Toyota Corolla car, which had no rear license plate, by a team from the Pasay City Police Force. When the police approached the driver and asked for the vehicle's papers, none were presented, prompting the police to ask the vehicle's occupants to disembark for verification purposes. The driver, petitioner, did so, while the man on the passenger side, Pineda, was seen

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[32] *People v. Balagat*, G.R. No. 177163, April 24, 2009, 586 SCRA 640, 644-645.

[33] Emphasis supplied.

attempting to hide a paper bag under his seat. The paper bag dropped on the floor, partially revealing its contents, namely, one of two plastic containers with a white crystalline substance inside. This prompted the police to search petitioner as well, and they recovered two small plastic sachets containing a white crystalline substance from him. An examination of the substance by the Southern Police District Crime Laboratory revealed the contents to be positive for *shabu*.

From the foregoing facts, it is clear that a conviction for transportation of dangerous drugs cannot stand.

"Transport" as used under the Dangerous Drugs Act is defined to mean: "to carry or convey from one place to another."[34] The essential element of the charge is the movement of the dangerous drug from one place to another. In the present case, although petitioner and his co-accused were arrested inside a car, the car was not in transit when they were accosted. From the facts found by the RTC, that car was parked and stationary. The prosecution failed to show that any distance was travelled by petitioner with the drugs in his possession. The conclusion that petitioner transported the drugs merely because he was in a motor vehicle when he was accosted with the drugs has no basis and is mere speculation. The rule is clear that the guilt of the accused must be proved with moral certainty. All doubts should be resolved in favor of the accused. It is the responsibility of the prosecution to prove the element of transport of dangerous drugs, namely, that transportation had taken place, or that the accused had moved the drugs some distance.

Well-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court. In such a case, the scales of justice must tilt in favor of an accused, considering that he stands to lose his liberty by virtue of his conviction. The Court must be satisfied that the factual findings

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[34] *People v. Del Mundo*, G.R. No. 138929, October 2, 2001, 366 SCRA 471, 485.

and conclusions of the trial court leading to an accused's conviction has satisfied the standard of proof beyond reasonable doubt.[35]

Having charged that petitioner acted in conspiracy with Pineda and Coderes, it was incumbent upon the prosecution to prove that all the accused had come to an agreement concerning the transport of *shabu* and had decided to execute the agreement.[36]

In this regard, our ruling in *Bahilidad v. People*[37] is instructive:

> There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.
>
> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.[38]

In this case, the prosecution, other than its bare assertions that petitioner and accused conspired in transporting the *shabu*,

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[35] *Bahilidad v. People*, G.R. No. 185195, March 17, 2010, 615 SCRA 597, 604.

[36] *People v. Lago*, 411 Phil. 52, 59 (2001).

[37] *Supra* note 35.

[38] *Id.* at 606. (Citations omitted.)

failed to establish that there was indeed a conscious criminal design existing between and among petitioner and accused to commit the said offense. True, petitioner was in the driver's seat of the parked car on that fateful day of December 15, 2003, but it could not be deduced that he was even aware that Pineda had with him two plastic containers containing *shabu*, nor did he accord any form of assistance to Pineda. According to PO2 Jovenir, these plastic containers were placed inside a bag and Pineda tried to conceal these under his seat.[39] These facts, standing alone, cannot give rise to a presumption of conspiracy. Certainly, conspiracy must be proven through clear and convincing evidence. Indeed, it is possible that petitioner was telling the truth when he said that he merely met with accused in order to offer the car for sale, as that was his part-time business.[40]

It bears stressing that conspiracy requires the same degree of proof required to establish the crime — proof beyond reasonable doubt. Thus, mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[41] In fine, the prosecution failed to discharge its burden to prove and establish conspiracy. Necessarily, petitioner should be held accountable only for his alleged respective participation in the commission of the offense.[42]

However, we find that the prosecution also failed to adequately prove petitioner's participation in the offense charged with moral certainty.

Crucial are the following facts. SPO2 Aure allegedly found the two sachets in the possession of petitioner.[43] However, it

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[39] *Supra* note 12.

[40] TSN, June 2, 2004, pp. 4, 9.

[41] *People v. De Chavez*, G.R. No. 188105, April 23, 2010, 619 SCRA 464, 476-477.

[42] *Garcia v. Court of Appeals*, 420 Phil. 25, 36 (2001).

[43] TSN, March 11, 2004, p. 15.

should be noted that SPO2 Aure did not mark the sachets himself. Instead, he turned over these sachets to PO2 Jovenir.[44]

Thus, on Direct Examination, PO2 Jovenir testified:

PROSECUTOR PUTI:

Q - Contained in this bag are also two (2) small transparent plastic sachets with granules and with markings RJ-4 and RJ-5 and the date. These two (2), why is it that the same are included in that bag?

A - SPO2 Aure confiscated those two (2) small transparent plastic sachets from the possession of [petitioner], sir.

Q - The driver?

A - Yes, sir.

Q - **How do you know that these are the two (2) plastic sachets that were confiscated by SPO2 Aure from [petitioner]**?

A - Sir, I also put markings RJ-4 and RJ-5 on those plastic sachets.

Q - **Why do you say that these were the two (2) plastic sachets that were confiscated by SPO2 Aure from the driver [petitioner]**?

A - Because SPO2 Aure handed to me those plastic sachets and **according to him, he confiscated those two (2) plastic sachets in front of [petitioner], sir**.

PROSECUTOR PUTI:

Q - When was the handing made?

A - Right at the scene, sir.[45]

The answers elicited from PO2 Jovenir raise numerous questions and ultimately cast doubts on the identity, integrity, and evidentiary value of the two sachets containing illegal drugs allegedly seized from petitioner. The prosecution, in its quest to establish its claim that these two sachets were actually recovered

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[44] *Id.*

[45] TSN, March 9, 2004, pp. 6-7. (Emphasis supplied.)

from petitioner, even had to propound similar questions to PO2 Jovenir twice — only to reveal that the latter merely relied on SPO2 Aure's claim. PO2 Jovenir did not actually witness that SPO2 Aure seized these two sachets from petitioner. Neither was it established that the two sachets were actually marked in the presence of petitioner by SPO2 Aure himself.

Apropos is our ruling in *People v. Coreche*:[46]

> Crucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after* they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.
>
> Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa* and *People v. Casimiro*, we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa* and *People v. Dismuke* that doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.[47]

WHEREFORE, the Court *MODIFIES* the Decision dated December 21, 2006 of the Court of Appeals in CA-G.R. CR No. 00180, and *ACQUITS* petitioner Michael San Juan *y* Cruz

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[46] G.R. No. 182528, August 14, 2009, 596 SCRA 350.

[47] *Id.* at 357-358. (Citations omitted.)

on reasonable doubt. He is ordered immediately *RELEASED* from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is *DIRECTED* to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177771. May 30, 2011]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARIELITO ALIVIO *y* OLIVEROS and ERNESTO DELA VEGA *y* CABBAROBIAS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF INNOCENCE; REBUTTABLE BY COMPETENT EVIDENCE ESTABLISHING THE COMMISSION OF THE CRIME. — While the presumption of innocence is the highest in the hierarchy of presumptions, it remains a rebuttable presumption. In a criminal case, the presumption of innocence can be overcome by the presumption of regularity when the latter is accompanied by strong evidence supporting the guilt of the accused. Even without the presumption of regularity, a drug conviction can be sustained through competent evidence establishing the existence of all the elements of the crimes charged.

2. ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED. — Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Thus, we generally defer to the assessment on this point by the trial court as it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand. Our independent examination of the records shows no compelling reason to depart from this rule.

3. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002; BUY-BUST OPERATIONS; NOT THE FAMILIARITY BETWEEN THE SELLER AND THE BUYER BUT THE AGREEMENT AND ACTS OF SALE AND DELIVERY OF THE ILLEGAL DRUGS THAT IS CRUCIAL. — [I]n *Gwyn Quinicot v. People*, we held that it is not the existing familiarity between the seller and the buyer, but the agreement and acts constituting the sale and delivery of the illegal drugs, that is crucial in drug-related cases: x x x In this case, the prosecution's evidence sufficiently established the exchange of the *shabu* and the buy-bust money between the appellants and PO2 Laro.

4. ID.; ID.; ON ASCERTAINING THE IDENTITY OF THE SEIZED ILLEGAL DRUGS AND/OR ITS PARAPHERNALIA. — In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of R.A. No. 9165 has been complied with or falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165; **and** (b) there was an unbroken link (not perfect link) in the chain of custody with respect to the confiscated items.

5. ID.; ID.; ID.; PROCEDURE IN HANDLING THE SEIZED ILLEGAL DRUG AND OR ITS PARAPHERNALIA; NON-COMPLIANCE UNDER JUSTIFIABLE GROUNDS WILL NOT RENDER THE SEIZURE INVALID AS LONG AS THE EVIDENTIARY VALUE OF SEIZED ITEMS IS PROPERLY PRESERVED. — Section 21(1), Article II of R.A. No. 9165 — that prescribes the procedure to be observed by the authorities in handling the illegal drug and/or drug paraphernalia confiscated — provides: x x x This provision is elaborated on under Section 21(a) of the IRR which provides

a saving clause in case the prescribed procedure is not complied with. Under this saving clause, *non-compliance with these requirements under justifiable grounds as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.*

6. ID.; ID.; ID.; CHAIN OF CUSTODY, WHICH MEANS THE DULY RECORDED AUTHORIZED MOVEMENTS OF THE SEIZED ILLEGAL ITEMS FROM TIME OF CONFISCATION UNTIL PRESENTED IN COURT. — The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines the chain of custody rule in the following manner: x x x

7. ID.; ID.; ILLEGAL SALE OF .06 GRAM OF *SHABU*; PROPER PENALTY METED IS LIFE IMPRISONMENT AND A FINE OF PHP500,000. — On the illegal sale of *shabu* (Criminal Case No. 12450-D), the appellants were caught and arrested for selling .06 gram of *shabu*. The RTC and the CA correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 against the appellants, in accordance with Section 5, Article II of R.A. No. 9165 which punishes illegal sale of *shabu* with 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).

8. ID.; ID.; ILLEGAL POSSESSION OF .10 GRAM OF *SHABU*; PROPER PENALTY METED OUT IS IMPRISONMENT OF 12 YEARS AND 1 DAY TO 20 YEARS WITH A FINE OF PHP300,000. — On the illegal possession of *shabu* (Criminal Case No. 12451-D), dela Vega was caught in possession of .10 gram of *shabu* and was meted the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and to pay a fine of ₱300,000.00. Section 11, paragraph 2(3), Article II of R.A. No. 9165 provides: x x x [W]e sustain the penalties the RTC and the CA imposed as these are within the range provided by law.

9. ID.; ID.; ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; PROPER PENALTY METED OUT IS IMPRISONMENT FOR 6 MONTHS AND 1 DAY TO 4 YEARS AND A FINE OF PHP10,000. — [I]llegal possession of drug paraphernalia (Criminal Case No. 12452-D) is punished under Section 12, Article II of R.A. No. 9165 that provides a penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years, and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00). We thus uphold the penalty of imprisonment of six (6) months and one (1) day to four (4) years and a fine of ₱10,000.00 that the RTC and the CA imposed on Alivio.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

On appeal to this Court is the Decision,[1] dated November 30, 2006, of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 01138, which affirmed the Decision[2] of the Regional Trial Court (*RTC*), Branch 70, Pasig City, in Criminal Case Nos. 12450-52-D. The RTC convicted Arielito Alivio *y* Oliveros and Ernesto dela Vega (collectively referred to as *appellants*) of violating Sections 5, 11 and 12, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Arraignment and Plea

In Criminal Case No. 12450-D, the Information charged the appellants of selling *shabu*, as follows:

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[1] Penned by Associate Justice Roberto A. Barrios (deceased), with the concurrence of Associate Justices Mario L. Guariña and Lucenito Tagle (retired); *rollo*, pp. 2-10.

[2] Penned by Judge Pablito M. Rojas; dated February 28, 2005. CA *rollo*, pp. 23-32.

the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Lemuel Laro, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing six (6) centigrams (0.06 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.[3]

In Criminal Case No. 12451-D, Dela Vega was charged of possessing *shabu* under the following Information:

the accused, not being lawfully authorized to possess any dangerous drug; did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing ten (10) decigrams (0.10 gram), of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.[4]

Finally, in Criminal Case No. 12452-D, Alivio was charged of possessing drug paraphernalia consisting of two disposable lighters, an improvised tooter and an improvised burner. The pertinent portion of the Information states:

the accused, not being lawfully authorized to possess paraphernalia or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession two (2) pcs. of disposable lighters, one (1) improvised tooter and one (1) improvised burner, which are all instruments, equipment, apparatus or paraphernalia, fit or intended for smoking, sniffing, consuming or introducing methamphetamine hydrochloride, commonly known as *shabu*, a dangerous drug, in violation of the said law.[5]

The appellants pleaded not guilty to all the charges and trial on the merits followed.

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[3] CA *rollo*, pp. 9-10.

[4] *Id.* at 11-12.

[5] *Id.* at 13-14.

The Version of the Prosecution

The prosecution's case relied on the theory that the police apprehended the appellants during a buy-bust operation conducted at Alivio's residence. During the buy-bust operation, the police found drug paraphernalia at Alivio's residence while a search on Dela Vega's person yielded one plastic sachet of *shabu* which the police seized.

The prosecution's evidence showed that at around 9:30 p.m. of May 20, 2003, the Pasig City Police received a tip from an asset that one "Ariel" was rampantly selling illegal drugs in Bagong Ilog, Pasig City. A buy-bust team was immediately formed in coordination with the Philippine Drug Enforcement Agency. The buy-bust money, which consisted of two (2) 100 peso bills, was prepared and marked with the symbol, "3L." PO2 Lemuel Lagunay Laro was designated to act as the poseur-buyer.

Together with SPO3 Lemuel Matias and PO1 Allan Mapula, PO2 Laro and the asset went to the house of Ariel. While the rest of the buy-bust team strategically positioned themselves at the target area, PO2 Laro and the asset met Ariel. The asset introduced PO2 Laro to Ariel who was later on identified as Alivio. The asset told Alivio that they wanted to buy *shabu*. Alivio asked how much they wanted to buy, to which the asset replied: "*dalawang daan lang p're at saka puwede kaming gumamit d'yan*?" The two were ushered into the second floor of the house where they saw Dela Vega seated in front of a table with drug paraphernalia. PO2 Laro then gave the buy-bust money to Alivio who handed it to Dela Vega. The latter then took out from his pocket one plastic sachet of *shabu* which he gave to Alivio who handed it to PO2 Laro. After the exchange, PO2 Laro introduced himself as a police officer and arrested Alivio and Dela Vega. The asset made a signal for the buy-bust team to come inside the house. SPO3 Matias searched Dela Vega and found him in possession of one plastic sachet of *shabu*. The buy-bust team also retrieved the drug paraphernalia on top of the table, which paraphernalia they correspondingly marked. The buy-bust team took Alivio, Dela Vega and the confiscated

items to the police station for investigation. Afterwards, the confiscated items were taken by PO1 Mapula to the PNP Crime Laboratory for examination. The two (2) plastic sachets tested positive for *shabu*.

By agreement of the prosecution and the defense, the testimony of forensic chemist P/Insp. Joseph Perdido was dispensed with and they entered stipulations on:

1) The due execution and genuineness of the Request for Laboratory Examination dated May 20, 2003 which was marked in evidence as Exhibit "A" and the stamp showing receipt thereof by the PNP Crime Laboratory as Exhibit "A-1";

2) The due execution and genuineness, as well as the truth of the contents, of Chemistry Report No. D-940-03E dated May 12, 2003 issued by Forensic Chemist P/Insp. Joseph M. Perdido of the PNP Crime Laboratory, Eastern Police District, Saint Francis St., Mandaluyong City, which was marked in evidence as Exhibit "B", the finding and conclusion as appearing on the report as Exhibit "B-1" and the signature of the forensic Chemist over his typewritten name likewise as appearing on the report as Exhibit "B-2";

3) The existence of the two (2) plastic sachets and other paraphernalia, but not their source or origin, contained in an envelope, the contents of which were the subject of the Request for Laboratory Examination, which where marked in evidence as follows: as Exhibit "C" (the envelope), as Exhibit "C-1" (the 1st plastic sachet), as Exhibit "D" (the improvised tooter with markings EXH-E AAO dated 05-20-03), as Exhibit "E" (the improvised burner) and as Exhibits "F-1" & "F-2" (the two disposable lighters).[6]

The Version of the Defense

The appellants anchored their defense on denial and frame-up. They denied selling *shabu* and claimed that they were together that night drinking at the second floor of Alivio's residence. They also claimed that five (5) men (who turned out to be

[6] *Id.* at 25.

policemen) suddenly barged in on them looking for a person named "Bon-bon." When they replied that neither of them was Bon-bon, the policemen frisked and arrested them. The policemen took from the appellants their earnings for that day and the ₱5,000.00 cash they found in the house. The appellants tried to resist arrest and suffered injuries as a result. [7]

Alivio additionally asserted that he could not have sold *shabu* to PO2 Laro since he knew him to be a policeman. Alivio claimed that he was a former driver of Atty. Nelson Fajardo whom he used to accompany to the police station where PO2 Laro was assigned.

The Ruling of the RTC

On February 28, 2005, the RTC convicted the appellants of all charges laid. The RTC relied on the presumption of regularity in the buy-bust operation and the lack of improper motive on the part of the police officers. The RTC rejected the proferred denial and frame-up as defenses as they are inherently easy to concoct, and found that the prosecution sufficiently established all the elements of the crimes charged and the identity of the appellants as perpetrators. The RTC thus concluded:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

In **Criminal Case No. 12450-D** both accused Arielito Alivio and Ernesto Dela Vega are hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act 9165 (illegal sale of *shabu*) and are hereby sentenced to **LIFE IMPRISONMENT** and to solidarily pay a **FINE** of **Five Hundred Thousand Pesos (PHP500,000.00).**

In **Criminal Case No. 12451-D** accused Ernesto dela Vega is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 11, Article II, Republic Act 9165 (illegal possession of *shabu*) and is hereby sentenced to **Twelve (12) Years**

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[7] Medical Certificate, dated March 2, 2004, issued by the Rizal Medical Center to dela Vega which showed that he had a contusion on his back; records, p. 94.

and **One (1) Day** to **Twenty (20) Years** and to pay a **Fine** of **Three Hundred Thousand Pesos** (**PHP300,000.00).**

In **Criminal Case No. 12452-D** accused Arielito Alivio is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 12, Article II, of Republic Act 9165 (illegal possession of drug paraphernalia) and is hereby sentenced to **Six (6) Years** and **One (1) Day** to **Four (4) Years** and a **FINE** of **Ten Thousand Pesos (PHP 10,000.00).**[8]

The appellants appealed to the CA.

The Ruling of the CA

On November 30, 2006, the CA affirmed the RTC decision. The CA took into account the consistent testimonies of the prosecution witnesses to support the presumption that the police officers regularly performed the buy-bust operation. The CA likewise ruled that the appellants failed to substantiate their defenses.

The Issue

The appellants raised the following lone assignment of error:

THE [CA] ERRED IN FINDING THE [APPELLANTS] GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF THE PROVISIONS OF REPUBLIC ACT NO. 9165.[9]

The appellants argue that the lower courts erred in evaluating the testimonial evidence when they placed undue reliance on the presumption of regularity and the absence of improper motive on the part of the police officers to perpetuate the claimed irregularities. The appellants assert that the presumption of regularity cannot take precedence over the presumption of innocence in their favor.

The appellants also fault the lower courts for disregarding the defense's evidence that showed Alivio's familiarity with PO2 Laro as a policeman. They emphasize that this evidence was corroborated by the testimony of defense witness Atty. Fajardo.

[8] *CA rollo*, pp. 31-32.

[9] *Id.* at 45.

Finally, the appellants contend that the identities of the subject *shabu* were not sufficiently proven since the seized items were not marked at the time the appellants were apprehended.

The Court's Ruling

We find no reversible error committed by the RTC and the CA in convicting the appellants of the crimes charged.

While the presumption of innocence is the highest in the hierarchy of presumptions, it remains a rebuttable presumption. In a criminal case, the presumption of innocence can be overcome by the presumption of regularity when the latter is accompanied by strong evidence supporting the guilt of the accused.[10] Even without the presumption of regularity, a drug conviction can be sustained through competent evidence establishing the existence of all the elements of the crimes charged.

In this case, although the presumption of regularity did not arise considering the evident lapses the police committed in the prescribed procedures, we rule that the prosecution's evidence sufficiently established all the elements of the three (3) crimes charged and the identity of the appellants as the perpetrators.

The existence of the buy-bust operation

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Thus, we generally defer to the assessment on this point by the trial court as it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand.[11] Our independent examination of the records shows no compelling reason to depart from this rule.

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[10] Dissenting Opinion of Justice Arturo D. Brion in *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 614-615, and *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 276.

[11] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 440; and *People v. Lim*, G.R. No. 141699, August 7, 2002, 386 SCRA 581, 593, citing *People v. Errojo*, 229 SCRA 49 (1994), and *People v. Gomez*, 229 SCRA 138 (1994).

First, the lower courts found the testimonies of PO2 Laro and SPO3 Matias consistent, positive and straightforward. These testimonies were corroborated by PO1 Mapula who testified that the appellants were apprehended through a buy-bust operation.

Second, the records reveal the lack of improper motive on the part of the buy-bust team. Appellant Alivio even admitted that he had no idea why the police officers filed the present case against him.[12] Alivio also denied police extortion.[13]

Third, the appellants' failure to file cases against the buy-bust team for planting evidence undoubtedly supports the prosecution's theory that the appellants were arrested because they were caught *in flagrante delicto* selling *shabu*.

Fourth, the following documentary evidence presented by the prosecution corroborates the existence of an actual buy-bust operation:

(a) The Pre-Opns Reports, made part of the records, showed that anti-narcotics operations were conducted on May 20, 2003 against one "@Ariel" who was "allegedly involved in selling/ trading of dangerous drugs."[14]

(b) The existence of the buy-bust money,[15] bearing the marking "3L," was presented during the trial as part of PO2 Laro's testimony.[16] According to PO2 Laro, the marking stood for his initials which he placed on the buy-bust money for easy identification.

(c) The Affidavits of Arrest[17] by PO2 Laro and SPO3 Matias executed immediately after the arrest of the appellants showed that the arrests were made pursuant to a buy-bust operation.[18]

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[12] TSN, May 25, 2004, p. 8.

[13] TSN, April 26, 2004, p. 25.

[14] Records, p. 10.

[15] Exhibits "G" and "H".

[16] Records, p. 70.

[17] Dated May 21, 2003.

[18] Records, pp. 5-6.

Familiarity

The defense failed to sufficiently prove the alleged familiarity of appellant Alivio with PO2 Laro. The testimony of defense witness Atty. Fajardo failed to give out specific details on the dates and occasions when he supposedly talked to PO2 Laro in the presence of Alivio.[19] Moreover, the evidence also shows a time gap between Alivio's employment with Atty. Fajardo (from 2000 to 2001) and the occurrence of the buy-bust operation (in 2003). As against these sketchy claims, PO2 Laro testified that Alivio failed to recognize him during the buy-bust operation.[20]

In any event, in *Gwyn Quinicot v. People*,[21] we held that it is not the existing familiarity between the seller and the buyer, but the agreement and acts constituting the sale and delivery of the illegal drugs, that is crucial in drug-related cases:

> What matters in drug related cases is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the sale and delivery of the dangerous drug. Besides, drug pushers, especially small quantity or retail pushers, sell their prohibited wares to anyone who can pay for the same, be they strangers or not. It is of common knowledge that pushers, especially small-time dealers, peddle prohibited drugs in the open like any article of commerce. Drug pushers do no confine their nefarious trade to known customers and complete strangers are accommodated provided they have the money to pay.[22] [Citations omitted]

In this case, the prosecution's evidence sufficiently established the exchange of the *shabu* and the buy-bust money between the appellants and PO2 Laro.

The identity of the confiscated shabu and/or drug paraphernalia

In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized

[19] TSN, July 21, 2004, p. 38.

[20] TSN, October 6, 2003, p. 11.

[21] G.R. No. 179700, June 22, 2009, 590 SCRA 458.

[22] *Id.* at 471-472.

from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of R.A. No. 9165 has been complied with or falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165; **and** (b) there was an unbroken link (not perfect link) in the chain of custody with respect to the confiscated items.

Section 21(1), Article II of R.A. No. 9165 — that prescribes the procedure to be observed by the authorities in handling the illegal drug and/or drug paraphernalia confiscated — provides:

> **Section 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

This provision is elaborated on under Section 21(a) of the IRR which provides a saving clause in case the prescribed procedure is not complied with. Under this saving clause, *non-compliance with these requirements under justifiable grounds as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items*.

The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of

duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines the chain of custody rule in the following manner:

> b. "Chain of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage**, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody [was] of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition[.]

In this case, although the prescribed procedure under Section 21(1), Article II of R.A. No. 9165 was not strictly complied with, we find that the integrity and the evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule.

(a) *The first link* — The records show that the *shabu* and the drug paraphernalia were immediately marked at the scene by PO2 Laro and SPO3 Matias before they proceeded to the police station.[23] PO2 Laro marked the plastic sachet containing *shabu* subject of the buy-bust sale, with "AAO 05-20-03" that stood for the initials of Alivio and the date of the buy-bust sale.[24] In turn, SPO3 Matias marked the retrieved *shabu* and the drug paraphernalia with his signature.[25]

(b) *The second link* — The records also disclose that after the respective markings were made, PO2 Laro and SPO3 Matias turned over the confiscated items in their custody at the police station for investigation. As may be gathered from the Request

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[23] TSN, October 6, 2003, p. 17.

[24] *Id.* at 22-23.

[25] TSN, December 3, 2003, pp. 8-9; and TSN, October 6, 2003, pp. 24- 25.

for Laboratory Examination dated May 20, 2003 and prepared by SPO4 Danilo M. Tuaño, the following specimens were recovered from the appellants and submitted for laboratory examination:

One (1) pc heat sealed transparent plastic sachet containing undetermined amount of white crystalline substance suspected to be *shabu* bought from suspect marked as "EXH A AAO 05-20-03";

One (1) pc heat sealed transparent plastic sachet containing undetermined amount of white crystalline substance marked as "EXH B ECDV 05-20-03";

Two (2) pc's (sic) disposable lighter marked as "EXH C1 to C2 AAA 05-20-03";

One (1) pc improvised burner marked as "EXH D AAO 05-20-03";

One (1) pc improvised waterpipe/tooter marked as "EXH E AAO 05-20-03."[26]

(c) *The third link* — PO1 Mapula testified that he was the one who delivered the request for laboratory examination and the specimens to the PNP Crime Laboratory.[27] He also testified that he turned over the specimens to one PO1 Chuidan who received them at 1:00 a.m. of May 21, 2003.[28] Upon receipt of the specimens, PO1 Chuidan stamped the request with a "Control No. 1700-03" and wrote "D-940-03."[29] In this regard, a facial examination of Chemistry Report No. D-940-03E shows that the very same specimens bearing the same markings stated in the police request were subjected to laboratory examination, completed at 3:15 a.m. of May 21, 2003.[30]

(d) *The fourth link* — The prosecution and the defense stipulated that the specimens examined by the forensic chemist,

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[26] Records, p. 8.

[27] TSN, February 23, 2004, p. 8.

[28] *Ibid.*; Records, pp. 7- 8.

[29] Records, p. 8

[30] *Id.* at 7.

contained in the request for laboratory examination, were the ones presented in court. PO2 Laro and SPO3 Matias identified and testified that the *shabu* and the drug paraphernalia examined were the items retrieved from the appellants in the buy-bust operation conducted on May 20, 2003.[31]

Under the circumstances, the prosecution's evidence clearly established an unbroken link in the chain of custody, thus removing any doubt or suspicion that the *shabu* and drug paraphernalia had been altered, substituted or otherwise tampered with. The unbroken link in the chain of custody also precluded the possibility that a person, not in the chain, ever gained possession of the seized evidence.[32]

The defenses of Denial and Frame-up

The appellants merely denied the buy-bust sale and their possession of the *shabu* and the drug paraphernalia. They claimed that they were framed by the police who took their earnings and forcibly took them to the police station. In light of the positive and credible testimony and the concrete evidence showing the existence of the buy-bust operation, these defenses are unworthy of belief. Dela Vega's injuries alone cannot rebut the consistent evidence that the appellants were arrested pursuant to a buy-bust operation. We particularly note in this regard that the participating policemen denied that they previously knew the appellants and that they entertained ulterior or illicit motives to frame them.

The Proper Penalties

On the illegal sale of *shabu* (Criminal Case No. 12450-D), the appellants were caught and arrested for selling .06 gram of *shabu*. The RTC and the CA correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 against the appellants, in accordance with Section 5, Article II of R.A. No. 9165 which punishes illegal sale of *shabu* with the penalty

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[31] *Supra* note 24, and TSN, December 3, 2003, pp. 13-15.

[32] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

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).

On the illegal possession of *shabu* (Criminal Case No. 12451-D), dela Vega was caught in possession of .10 gram of *shabu* and was meted the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and to pay a fine of ₱300,000.00. Section 11, paragraph 2(3), Article II of R.A. No. 9165 provides:

> (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of xxx methamphetamine hydrochloride or "*shabu*."

Thus, we sustain the penalties the RTC and the CA imposed as these are within the range provided by law.

Lastly, illegal possession of drug paraphernalia (Criminal Case No. 12452-D) is punished under Section 12, Article II of R.A. No. 9165 that provides a penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years, and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00). We thus uphold the penalty of imprisonment of six (6) months and one (1) day to four (4) years and a fine of ₱10,000.00 that the RTC and the CA imposed on Alivio.

WHEREFORE, premises considered, we *AFFIRM* the decision, dated November 30, 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 01138 which, in turn, affirmed the decision, dated February 28, 2005, of the Regional Trial Court, Branch 70, Pasig City, in Criminal Case Nos. 12450-52-D.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178903. May 30, 2011]

JULIET G. APACIBLE, *petitioner, vs.* **MULTIMED INDUSTRIES INCORPORATED and THE BOARD OF DIRECTORS OF MULTIMED INDUSTRIES, The President MR. JOSELITO TAMBUNTING, Managers MARLENE L. OROZCO, VERONICA C. TIMOG, OLGA F. MARINO and MA. LUZ B. YAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PROPRIETY OF GRANTING SEPARATION PAY IN TERMINATION CASES. — *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM))-Katipunan* explains the propriety of granting separation pay in termination cases in this wise: **The law is clear. Separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause, such as serious misconduct.** x x x

2. ID.; ID.; GROSS INSUBORDINATION; DOES NOT ENTITLE DISMISSED EMPLOYEE TO SEPARATION PAY. — *Bascon v. Court of Appeals* outlines the elements of gross insubordination as follows: As regards the appellate court's finding that petitioners were justly terminated for gross insubordination or wilful disobedience, Article 282 of the Labor Code provides in part: An employer may terminate an employment for any of the following causes: (a) Serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. However, wilful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two requisites: **(1) the employee's assailed conduct must have been wilful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known**

> **to the employee and must pertain to the duties which he had been engaged to discharge.** Clearly, petitioner's adamant refusal to transfer, coupled with her failure to heed the order for her return the company vehicle assigned to her and, more importantly, allowing her counsel to write letters couched in harsh language to her superiors unquestionably show that she was guilty of insubordination, hence, not entitled to the award of separation pay.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Juliet Apacible was hired sometime in 1994 by respondent Multimed Industries Incorporated (the company) as Hospital Sales Representative. She rose from the ranks to become Assistant Area Sales Manager for Cebu Operations, the position she held at the time she was separated from the service in 2003.

On August 4, 2003, petitioner was informed by respondent Marlene Orozco (Marlene), her immediate superior, that she would be transferred to the company's main office in Pasig City on account of the ongoing reorganization. As the transfer would entail major adjustments, petitioner requested that her transfer be made effective in October or November 2003 and that she be given time to discuss it with her husband and daughter.

A week later, however, or on August 11, 2003, petitioner was informed that her transfer would be effective August 18, 2003. On even date, she was placed under investigation for the delayed released of BCRs (cash budget for customer representation in sealed envelopes which are given to loyal clients) which she received for distribution earlier in July 2003. In her written explanation,[1] petitioner, admitting that the delay constituted a violation of company policies, averred that she forgot to endorse the BCRs because she was thinking about her impending transfer; and that she did not misappropriate the money as she had already released the BCRs.

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[1] Records, pp. 85-86.

Finding that the delay in releasing the BCRs amounted to loss of trust and confidence, petitioner was given the option to resign. She thereupon reported to the head office in Pasig City where she met on August 23, 2003 with Marlene and respondent Ma. Luz B. Yan (referred to as Jig Blanco Yan [Jig] in the Decision and letters), respondent company's Human Resources Manager.

In the meeting with Marlene and Jig, petitioner claims that Jig gave her four options: resignation, termination, availment of an early retirement package worth ₱40,000, or transfer to Pasig City. Without availing of any option, petitioner took a leave of absence on August 28, 29 and September 1, 2003.

On September 1, 2003, petitioner, through her counsel Atty. Leo Montenegro, sent letters[2] to respondent Olga Mariño (Olga) and Jig denouncing their August 23 meeting as "illegal," "insensitive," "inhumane" and petitioner's dismissals a "unilateral arrangement and ruthless display of power." In the same letter, Atty. Montenegro demanded payment of separation pay and stated that he had advised petitioner to remain in her current position in Cebu.

On September 3, 2003, respondent company sent petitioner a memorandum-directive[3] for her to immediately report to the head office in Pasig City and to return the company vehicle assigned to her to the Cebu Office within 24 hours. Petitioner did not heed the directive, however. She instead filed an application for sick leave until September 11, 2003, and another until September 27, 2003.

By Memorandum[4] of October 1, 2003, respondent reiterated its directive to petitioner, but her counsel Atty. Montenegro sent another letter to Jig, faulting her for pressuring petitioner to resign and reiterating the demand for separation pay. Again Atty. Montenegro stated that he had advised petitioner to remain in Cebu.

On October 6, 2003, petitioner requested that she be given her daily work assignment in Cebu, which request was later to

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[2] *Id.* at pp. 60-61.

[3] *Id.* at p. 88.

[4] *Id.* at p. 90.

be denied by Olga by letter[5] dated October 8, 2003. On October 7, 2003, petitioner was given a show cause notice[6] for her to explain in writing why she should not be sanctioned for insubordination for failure to comply with the transfer order.

Again, petitioner, through Atty. Montenegro, wrote[7] respondent company, maintaining that she was "not transferring to Manila" and that if the company "want[ed] petitioner out of the company," separation pay must be paid.

By letter[8] of October 14, 2003 to Atty. Montenegro, respondent company denied having pressured petitioner as it stressed that the transfer was based on business demands and did not entail a demotion in rank nor diminution of benefits.

On November 4, 2002, respondent company sent petitioner a notice of termination[9] effective November 7, 2003 for *insubordination*, prompting petitioner to file a complaint[10] for illegal dismissal, non-payment of overtime pay, 13th month pay, service incentive leave pay, separation pay, damages and attorney's fees before the Labor Arbiter.

By Decision[11] of March 22, 2005, the Labor Arbiter dismissed petitioner's complaint, ruling that she was dismissed for just cause, *i.e.*, fraud or loss or trust and confidence under Article 282 (a) and (c) of the Labor Code.

On appeal, the National Labor Relations Commission (NLRC), by Decision[12] of March 22, 2005, *affirmed* the Labor Arbiter's

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[5] *Id.* at p. 12.

[6] *Id.* at p. 92.

[7] *Vide* letter dated October 9, 2003, *id.* at 66-67.

[8] *Id.* at 10.

[9] *Id.* at 70.

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

[11] *Id.* at 107-135. Penned by Labor Arbiter Ricardo G. Barrios, Jr.

[12] *Id.* at 184-192. Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

decision but on a different ground — petitioner's refusal to obey the transfer orders which amounted to insubordination. The NLRC, however, granted petitioner separation pay by way of financial assistance amounting to ₱282,370, 13th month pay of ₱23,530.833, and ₱5,430.1925 representing salary for five unpaid days in November.

In granting separation pay, the NLRC noted that petitioner's refusal to comply with the transfer orders was upon advice of her counsel, hence, there was a "modicum of good faith" on her part. Respondent company moved for partial reconsideration of this ruling which petitioner, in her comment, opposed and even sought the award of moral and exemplary damages.

By Resolution[13] of February 22, 2006, the NLRC denied respondent company's motion, and glossed over petitioner's comment as it was not under oath.

By Decision[14] of February 27, 2007, the Court of Appeals granted respondent company's appeal by modifying the NLRC Decision. It ruled that petitioner was not entitled to separation pay because, contrary to the NLRC's finding, she "lacked good faith." It noted that petitioner, from the start, knew and accepted the company policy on transfers whenever so required, and could not thus refuse "another valid reassignment by treating it as an imposition and burden."

The appellate court further held that as an Assistant Area Sales Manager, petitioner was expected to "show more exacting work ethics, a higher degree of loyalty and respect as opposed to her subordinate employees," yet she "openly and continually defied" the transfer orders; and that her belligerent attitude became even more pronounced when her counsel sent several insulting and threatening letters to respondent company and its officers.

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[13] *Id.* at 226-229. Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[14] *Rollo*, pp. 26-40. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Antonio J. Villamor and Stephen C. Cruz.

The appellate court went on to find that petitioner's acts were "highly insolent, impertinent and lacking in good faith," hence, not entitled to separation pay by way of financial assistance.

Petitioner's motion for reconsideration having been denied by Resolution[15] of June 28, 2007, she instituted the present petition in which she prays for the restoration of the award of the separation pay by way of financial assistance.

The only issue thus proffered is whether petitioner is entitled separation pay by way of financial assistance.

As found by the Labor Arbiter, the NLRC and the appellate court, petitioner was justly dismissed from employment. The NLRC awarded separation pay as financial assistance, however, noting that petitioner's obstinacy was upon the advice of her counsel, Atty. Montenegro and, therefore, there was a modicum of good faith on her part. The appellate court demurred to this ruling, noting that petitioner's actuations reeked of bad faith, hence, undeserving of separation pay.

The petition fails.

Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan[16] explains the propriety of granting separation pay in termination cases in this wise:

The law is clear. Separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause, such as serious misconduct.

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It is true that there have been instances when the Court awarded financial assistance to employees who were terminated for just causes, on grounds of equity and social justice. The same, however, has

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[15] *Id.* at 49. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Antonio J. Villamor and Stephen C. Cruz.

[16] G.R. No. 164016, March 15, 2010, 615 SCRA 240.

been curbed and rationalized in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*. In that case, we recognized the harsh realities faced by employees that forced them, despite their good intentions, to violate company policies, for which the employer can rightly terminate their employment. For these instances, the award of financial assistance was allowed. But, in clear and unmistakable language, we also held that the award of financial assistance shall not be given to validly terminated employees, whose offenses are iniquitous or reflective of some depravity in their moral character. When the employee commits an act of dishonesty, depravity, or iniquity, the grant of financial assistance is misplaced compassion. It is tantamount not only to condoning a patently illegal or dishonest act, but an endorsement thereof. It will be an insult to all the laborers who despite their economic difficulties, strive to maintain good values and moral conduct.

In fact, in the recent case of *Toyota Motors Philippines, Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, we ruled that **separation pay shall not be granted to all employees who are dismissed on any of the four grounds provided in Article 282 of the Labor Code.** Such ruling was reiterated and further explained in *Central Philippines Bandag Retreaders, Inc. v. Diasnes*:

> To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or wilful disobedience; gross and habitual neglect of duty; fraud or wilful breach of trust; or commission of a crime against the person of the employer or his immediate family — grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as assistance to the undeserving and those who are unworthy of the liberality of the law. (italics in the original, emphasis and underscoring supplied)

Petitioner was, it bears reiteration, dismissed for wilfully disobeying the lawful order of her employer to transfer from

Cebu to Pasig City. As correctly noted by the appellate court, petitioner knew and accepted respondent company's policy on transfers when she was hired and was in fact even transferred many times from one area of operations to another — Bacolod City, Iloilo City and Cebu.

Bascon v. Court of Appeals[17] outlines the elements of gross insubordination as follows:

> As regards the appellate court's finding that petitioners were justly terminated for gross insubordination or wilful disobedience, Article 282 of the Labor Code provides in part:
>
> An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.
>
> However, wilful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two requisites: **(1) the employee's assailed conduct must have been wilful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.** (emphasis and underscoring supplied)

Clearly, petitioner's adamant refusal to transfer, coupled with her failure to heed the order for her return the company vehicle assigned to her and, more importantly, allowing her counsel to write letters couched in harsh language to her superiors unquestionably show that she was guilty of insubordination, hence, not entitled to the award of separation pay.

WHEREFORE, the petition is denied and the Decision of the Court of Appeals dated February 27, 2007 and Resolution of June 28, 2007 are *AFFIRMED.*

SO ORDERED.

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

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[17] G.R. No. 144899, February 5, 2004, 422 SCRA 122.

THIRD DIVISION

[G.R. No. 179024. May 30, 2011]

ESTATE OF PASTOR M. SAMSON, represented by his heir ROLANDO B. SAMSON, *petitioner, vs.* **MERCEDES R. SUSANO and NORBERTO R. SUSANO,** *respondents.*

[G.R. No. 179086. May 30, 2011]

JULIAN C. CHAN, *petitioner, vs.* **MERCEDES R. SUSANO and NORBERTO R. SUSANO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; P.D. NO. 27; OPERATION LAND TRANSFER (OLT) PROGRAM; NOT APPLICABLE WHERE SUBJECT LAND IS LESS THAN SEVEN (7) HECTARES AND IT WAS NOT SHOWN THAT LANDOWNER OWNS OTHER LANDS. — Applying our pronouncement in *Levardo v. Yatco*, we rule that the subject land cannot be subject to the Operation Land Transfer (OLT) program of P.D. No. 27 for two reasons: first, the subject land is less than seven hectares; and second, respondents failed to show that Pastor owned other agricultural lands in excess of seven hectares or urban land from which he derived adequate income, as required by Letter of Instruction (LOI) No. 474. Moreover, the DAR Memorandum on the "Interim Guidelines on Retention by Small Landowners" dated July 10, 1975 is explicit: 5. Tenanted rice and/or corn lands seven (7) hectares or less **shall not be covered** by Operation Land Transfer. The relation of the land owner and tenant-farmers in these areas shall be **leasehold** x x x

2. ID.; ID.; OPERATION LAND LEASEHOLD (OLL) PROGRAM; APPLICABLE TO AGRICULTURAL LAND OF LESS THAN 7 HECTARES, DEVOTED TO RICE AND CORN. — [W]hile the disputed landholding which had an original aggregate area of only 1.0138 hectares is not covered by the OLT program, the same may still be covered by P.D. No. 27, albeit under its Operation Land Leasehold (OLL)

program. The OLL program placed landowners and tenants of agricultural land devoted to rice and corn into a leasehold relationship as of October 21, 1972.

3. ID.; ID.; TENANCY RELATIONSHIP; METRO MANILA ZONING ORDINANCE NO. 81-01 DID NOT CEASE RIGHTS PREVIOUSLY ACQUIRED OVER LANDS LOCATED WITHIN THE RECLASSIFIED ZONE WHICH ARE NEITHER RESIDENTIAL NOR LIGHT INDUSTRIAL IN NATURE. — Chan maintains that the tenancy relationship between Pastor and Macario, if there was any, ceased following the reclassification of the subject land as belonging to the low intensity residential zone (I-1) as of March 18, 1981. His contention, however, lacks merit in light of our ruling in *Co v. Intermediate Appellate Court*, wherein we said that Metro Manila Zoning Ordinance No. 81-01 did not have the effect of discontinuing rights previously acquired over lands located within the reclassified zone which are neither residential nor light industrial in nature. The zoning ordinance is given prospective operation only.

4. ID.; AGRICULTURAL TENANCY ACT OF THE PHILIPPINES (RA NO. 1199); TENANT, DEFINED. — R.A. No. 1199, otherwise known as the Agricultural Tenancy Act of the Philippines, defines a tenant as a person who, himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by, another, with the latter's consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying the landholder a price certain or ascertainable in produce or in money or both, under a leasehold tenancy system.

5. ID.; ID.; TENANCY RELATIONSHIP; ELEMENTS. — For a tenancy relationship to exist between the parties, the following essential elements must be shown: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and (6) there is sharing of the harvests between the parties. The presence of all of these elements must be proved by substantial evidence.

6. ID.; ID.; ID.; THAT ONE IS A *DE JURE* TENANT REQUIRES INDEPENDENT AND CONCRETE EVIDENCE TO PROVE

PERSONAL CULTIVATION, SHARING OF HARVEST OR CONSENT OF THE LANDOWNER. — It has been repeatedly held that occupancy and cultivation of an agricultural land will not ipso facto make one a de jure tenant. Independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner. Substantial evidence necessary to establish the fact of sharing cannot be satisfied by a mere scintilla of evidence; there must be concrete evidence on record adequate to prove the element of sharing. To prove sharing of harvests, a receipt or any other credible evidence must be presented, because self-serving statements are inadequate. Tenancy relationship cannot be presumed; the elements for its existence are explicit in law and cannot be done away with by conjectures. Leasehold relationship is not brought about by the mere congruence of facts but, being a legal relationship, the mutual will of the parties to that relationship should be primordial. For implied tenancy to arise it is necessary that all the essential requisites of tenancy must be present.

APPEARANCES OF COUNSEL

Moises Samson Samson & Associates for Estate of Pastor M. Samson.

Gancayco Balasbas & Associates Law Offices for Julian Chan.

Lapena Manzano Villanueva & Associates Law Firm for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us are two consolidated petitions for review on *certiorari* seeking to reverse the August 31, 2006 Decision[1] and the July 27, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP Nos. 89052 and 89443. The CA dismissed the

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[1] *Rollo* (G.R. No. 179086), pp. 37-53. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo, concurring.

[2] *Id.* at 55-57.

separate appeals filed by herein petitioners Estate of Pastor M. Samson, represented by Rolando B. Samson, and Julian C. Chan from the November 7, 2003 Decision[3] and December 29, 2004 Resolution[4] of the Department of Agrarian Reform Adjudication Board (DARAB), Central Office.

The Facts

Pastor M. Samson (Pastor) owned a 1.0138-hectare parcel of land known as Lot 1108 of the Tala Estate Subdivision located in Bagumbong, Caloocan City and covered by Transfer Certificate of Title (TCT) No. 65174. In 1959, Pastor was approached by his friend Macario Susano (Macario) who asked for permission to occupy a portion of Lot 1108 to build a house for his family. Since Pastor was godfather to one of Macario's children, Pastor acceded to Macario's request. Macario and his family occupied 620 square meters of Lot 1108 and devoted the rest of the land to *palay* cultivation. Herein respondents, Macario's wife Mercedes R. Susano and their son Norberto R. Susano, insist that while no agricultural leasehold contract was executed by Pastor and Macario, Macario religiously paid 15 cavans of *palay* per agricultural year to Pastor, which rent was reduced by Pastor in 1986 to 8 cavans of *palay* per agricultural year.[5]

In 1973, Pastor subdivided Lot 1108 into three portions, to wit: Lot 1108-A having an area of 3,172 square meters and covered by TCT No. 52637; Lot 1108-B having an area of 270 square meters and covered by TCT No. 52635; and Lot 1108-C having an area of 6,696 square meters and covered by TCT No. 52638. The first and last parcels, namely Lots 1108-A and 1108-C, remained registered in Pastor's name while Lot 1108-B was sold to Jimena Novera in 1973 without Macario's knowledge.[6]

In 1979, Pastor sold 2,552 square meters of Lot 1108-A to spouses Felix Pacheco and Juanita Clamor, allegedly also without

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[3] Annex "H", *rollo* (G.R. No. 179024), pp. 107-122.

[4] Annex "I", *id.* at 123-124.

[5] Records, p. 185.

[6] *Id.* at 237-241.

Macario's knowledge and consent. As a result of the sale, Lot 1108-A was further subdivided into three portions: (1) Lot 1108-A-1 measuring 620 square meters and covered by TCT No. 137744 in Pastor's name; (2) Lot 1108-A-2 measuring 2,361 square meters and covered by TCT No. 137745; and (3) Lot 1108-A-3 measuring 191 square meters and covered by TCT No. 137746. The last two parcels are registered in the name of spouses Felix Pacheco and Juanita Clamor.[7]

Lots 1108-A-1 and 1108-C comprising a total area of 7,316 square meters remained occupied and cultivated by Macario and his family.

On February 28, 1989, Pastor sold Lot 1108-C to petitioner Julian Chan.[8] Consequently, TCT No. 52638 was cancelled and TCT No. 176758 was issued in Chan's name.

According to respondents, no written notice was sent by Pastor to Macario prior to the sale to Chan of Lot 1108-C comprising an area of 6,696 square meters. They aver that Macario came to know of the transaction only after Chan visited the property sometime in October 1990 accompanied by an employee from the city government.[9]

Chan, on the other hand, claims that prior to buying Lot 1108-C from Pastor, he ascertained the location and condition of the property. He maintains that he knew the property to be a residential lot as indicated in Tax Declaration No. B-026-09768 issued over the said property by the Caloocan City Assessor's Office.[10]

On November 1990, Macario received a letter from Pastor's lawyer demanding that he vacate the property within twenty (20) days.[11] Aggrieved, Macario filed a complaint against Pastor

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[7] *Id.* at 242-244.

[8] *Id.* at 245-246.

[9] *Id.* at 217.

[10] *Id.* at 136.

[11] *Id.* at 206.

before the Municipal Agrarian Reform Office (MARO) of Valenzuela.[12]

Meanwhile, it appears that Chan and Macario tried to settle amicably the dispute as between them. On September 26, 1991, Macario and his wife Mercedes executed a notarized document entitled, "*Kusang-Loob na Pagtatalaga*" (Deed of Undertaking)[13] wherein Macario, recognizing that Chan is a buyer in good faith, acknowledged the latter's ownership over the said landholding. The said document provides, *viz*:

KUSANG-LOOB NA PAGTATALAGA (DEED OF UNDERTAKING)

ALAMIN NG LAHAT:

Kami na sina MACARIO SUSANO at MERCEDES SUSANO, mag-asawa, Pilipino at naninirahan sa Bagumbong, Kalookan City, ay nagsaysay ng mga sumusunod:

1. Na kami ang naghain ng reclamo sa Agrarian Reform Office sa Valenzuela, Metro Manila laban kay Ginoong Pastor Samson ng Kaloocan City;

2. Na ang aming reclamo laban kay Ginoong Pastor Samson ay ng ipagbile niya ang isang lote na may laking 6696 metro cudrados (sic), humigit kumulang, na kami ang nagsasaka na hindi kami pinagsabihan labag sa batas ng Land Reform;

3. Na ang nasabing lote ay ipinagbile kay Ginoong Jul[ia]n Chan na sa aming pagkakaalam [ay] binile ang nasabing lote in good faith at hindi alam na kami ang nagsasaka;

4. Amin din [napag-alaman] na si Ginoong Jul[ia]n Chan [ay] binile ang nasabing lote sa kadahilanan na ang ipinakitang Tax Declaration ni Ginoong Pastor Samson ay hindi taniman ng palay kundi isang lugar na tirikan ng mga bahay lamang (residential area) at hindi labag sa Batas ng Land Reform;

5. Sa kadahilanan na si Ginoong Julian Chan ay binile ang nasabing lote na walang alang-alang (in good faith) at umasa sa

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[12] Entitled *Macario Susano v. Pastor Samson, et al.* and docketed as Case No. 91-005.

[13] *Rollo* (G.R. No. 179086), pp. 67-68. Emphasis supplied.

Tax Declaration na ipinakita sa kanya, ***kami at sampo ng aking (sic) mga anak [ay] kinikilala ang kanyang pagmamay[-]ari at aming iginagalang ang kanyang karapatan bilang may[-]ari at kami ay [nangangako] na hindi namin siya o ang kanyang familia gagambalain, tatakutin o bibigyan ng ano mang kaguluhan sa nasabing lote****;*

6. Aming din [ipinangangako] na si Ginoong Julian Chan at ang kanyang familia ay may laya na dalawin sa anumang oras ng gabi or (sic) araw ang nasabing lote at ibig naming paabutin sa Agrarian Reform Office sa Valenzuela na huwag isangkot si Ginoong Julian Chan sa aming gusot ni Ginoong Pastor Samson.

Sa katunayan ng lahat, kami lumagda ngayon ika-26 ng Septiembre, 1991 dito sa Manila.

(signed) (thumbmarked)
MACARIO SUSANO MERCEDES SUSANO

Assisted by: (signed)
Atty. Valeriano T. Tolentino

Sa harap nila:
(signed) (signed)
FABIAN SUSANO REYNALDO M. JOSON

x x x x x x x x x

Two other similar documents dated September 26, 1991 were executed by Macario and Mercedes in favor of Chan.[14] In one of these documents, Macario and Mercedes acknowledged the receipt of ₱10,000.00 from Chan,[15] as follows:

ALAMIN NG SINO MANG MAKABASA NITO:

Kaming mag-asawang Macario at Mercedes Susano ay nagpapasalamat sa malaking tulong na ibinigay sa aming familia ni Ginoong Julian Chan na sa aming kagipitan ay binigyan kami ng halagang ₱10,000.00 peso (sic) *bagaman wa[l]ang pag-kakautang o obligacion sa amin.*

Sa aming malaking pagpapasalamat at kagalakan ay masasabi naming ***wala siyang ligalig o pa[n]gamba na aming hahadla[n]gan***

[14] Annexes "H" and "I", *id.* at 69-70.

[15] *Id.* at 70. Emphasis supplied.

ang kanyang pagkakabile ng isang parcelang lupa kay Ginoong Pastor Samson na aming iginagalang at kinikilala bagaman yoong (sic) nasabing lupa ay aming tinatrabaho nang pag-aari pa ni Ginoong Pastor Samson.

Sa katunayan ng lahat na nasasaad sa itaas, kaming mag-asawa ay lumagda ngayon[g] ika-26 ng Septiembre, 1991 dito sa Kalookan City.

(signed) MACARIO SUSANO	(thumbmarked) MERCEDES SUSANO
SA HARAP NILA: (illegible)	(illegible)

On April 9, 1992, Chan and Macario, assisted by their respective counsels, executed a Joint Motion and Manifestation[16] wherein Macario promised to surrender possession of the property to Chan on or before November 30, 1992.

On February 9, 1993, Macario died and was succeeded by respondents in the possession and cultivation of the subject landholding.

Thereafter, on August 17, 1993 respondents filed an action for maintenance of peaceful possession[17] with prayer for the issuance of a restraining order/preliminary injunction and for the redemption of the subject landholding against Pastor and Chan before the Department of Agrarian Reform Adjudication Board (DARAB) of Region IV. Specifically, the complaint prayed for the inclusion of the 7,316-square meter portion of said landholding, or Lots 1108-A-1 and 1108-C, within the Coverage of the Operation Land Transfer (OLT) Program under Presidential Decree (P.D.) No. 27[18] or The Tenant Emancipation Decree.

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[16] Annex "J", *id.* at 71-72.

[17] Docketed as DARAB Case No. IV-MM-0063-93. Records, pp. 1-8.

[18] Entitled "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR," effective October 21, 1972.

They also asked that an emancipation patent be issued in their favor. They tendered ₱12,052.80 in cash representing the reasonable redemption price over the subject landholding based on the highest land valuation prescribed by the DAR on unirrigated rice land.[19] Said amount was accepted by the DAR Regional Cashier per Order[20] of DARAB Regional Adjudicator Fe Arche-Manalang.

In his Answer,[21] Chan maintained that he is a buyer in good faith and that he relied on the tax declaration which stated that the subject property is residential in character. He also averred that agreements were made between him and Macario recognizing his ownership over the said land in exchange for ₱25,000 paid by him to Macario, ₱10,000 of which was duly acknowledged by Macario in writing.[22] Chan insisted that Macario also promised to surrender possession of the property to him on or before November 30, 1992.

Pastor, on the other hand, filed a Motion to Dismiss citing the pendency of the complaint filed against him before the MARO of Valenzuela and alleging that the property is not agricultural land but a residential lot as indicated in Tax Declaration No. 10081, dated August 29, 1986, issued by the Caloocan City Assessor's Office. Pastor also argued that the land involved, Lot 1108-A-1 covered by TCT No. 137744, is only 620 square meters, too small to be considered a viable family-size farm or economic family-size farm under Republic Act (R.A.) No. 6657 or the Comprehensive Agrarian Reform Law (CARL) and P.D. No. 27.[23]

Respondents filed the Opposition[24] to Pastor's motion to dismiss, which Pastor countered through a Reply.[25] On May

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[19] Records, pp. 32-33.

[20] *Id.* at 36.

[21] *Id.* at 37-39.

[22] *Id.* at 144.

[23] *Id.* at 57-59.

[24] *Id.* at 65-68.

[25] *Id.* at 79-82.

10, 1994, the Regional Agrarian Reform Adjudicator (RARAD) issued an Order[26] denying Pastor's motion and directing the parties to submit their respective position papers. Pastor filed a Motion for Reconsideration,[27] reiterating his arguments in his motion to dismiss, and claiming that respondents are not entitled to the benefits of the agrarian reform program because they are not landless peasants. Said motion was, however, denied.[28] Thus, Pastor filed his Answer.[29]

In his Answer, Pastor maintained that no tenancy relationship was established between him and herein respondents because Macario's occupancy, as well as that of respondents, was only by mere tolerance. He also alleged that respondents' cause of action, if there be any, is already barred by prescription, estoppel and/or laches.[30]

Pastor likewise filed his Position Paper[31] as directed. He insisted that the land is not covered by R.A. No. 6657 or by P.D. No. 27 as the land is not agricultural land and no tenancy relationship existed between him and herein respondents, who occupied his land by mere tolerance. He also reiterated that even assuming that the land is agricultural land, respondents are not entitled to the benefits of said land reform laws as they are not landless tenants to begin with and the subject land is too small to be a viable family-size farm.

Chan for his part argued in his Position Paper[32] that the subject parcel of land cannot be considered as agricultural land due to the enactment in 1981 of Metro Manila Zoning Ordinance No. 81-01 classifying the lands within the Metropolitan Manila area

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[26] *Id.* at 86.

[27] *Id.* at 89-91.

[28] *Id.* at 107-111.

[29] *Id.* at 117-121.

[30] *Id.* at 118.

[31] *Id.* at 147-158.

[32] *Id.* at 126-135.

as residential and/or commercial. Chan pointed that the said zoning ordinance preceded R.A. No. 6657, which became effective only on June 15, 1988.[33]

Meanwhile, herein respondents maintained in their Position Paper[34] that their predecessor-in-interest, Macario, was a bona fide agricultural tenant; hence, they are entitled to the rights of pre-emption and redemption. And having validly exercised their right of redemption through the deposit of the redemption price with the DAR, they are allegedly now the owners of the subject land. That they have such right of redemption is likewise due to the fact that the subject land is covered by the OLT Program, respondents added.

Up to now, the disputed portion of the subject landholding is still utilized as a rice field by the respondents.[35]

The RARAD's Ruling

On December 26, 1994, the RARAD issued a Decision[36] declaring that the late Macario validly acquired the status of a bona fide and de jure tenant over the subject land due to Pastor's implied acquiescence in allowing Macario to discharge the duties of a tenant for a considerable length of time until the latter's death in 1993. This notwithstanding, respondents' complaint was dismissed. The RARAD ruled:

> x x x Under the given factual milieu, there can be no question that the Plaintiffs' predecessor-in-interest[,] the late Macario Susano[,] validly acquired the status of a bona fide and de jure tenant over the subject landholding by reason of Defendant Pastor Samson's implied acquiescence over the years from the time he discharged the duties of such tenant until his demise in 1993. Estoppel by acquiescence has definitely set in and Petitioner can no longer impugn

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[33] *Id.* at 132-133.

[34] *Id.* at 161-204.

[35] Annexes "A", "A-1", "A-2", and "A-3", *rollo* (G.R. No. 179086), pp. 115-116.

[36] Records, pp. 251-270.

at this late stage the validity of the said decedent's acquired tenancy status which is entitled to full judicial protection under the well-recognized principle of security of tenure guaranteed under existing agrarian laws which were established in the light of the social justice precept of the Constitution and in the exercise of the police power of the State to promote the common weal. The expiration of the period of the contract as fixed by the parties, or the sale, alienation or transfer of legal possession of the land does not[,] of itself[,] extinguish the relationship. In the latter case, the purchaser or transferee is simply subrogated to the rights and substituted to the obligations of the agricultural lessor. x x x

x x x x x x x x x

However, herein lies the quandary.

As early as 1981 with the passage of Metro Manila Zoning Ordinance [No.] 81-01, the land in question has ceased to be agricultural. Judicial notice is taken of the fact that Caloocan City where the subject landholding is located is part of Metro Manila whose updated Comprehensive Development Plan and Accompanying Zoning Ordinance 81-01 was found to be in conformity with the requirements of Presidential Decree No. 922, Letter of Instructions (sic) No. 729 and Execut[i]ve Order No. 648 as specifically set out in the Memorandum of Agreement (MOA) executed on January 11, 1981 between the Metro Manila Commission (now Metro Manila Authority) and the HSRC (Human Settlements Regulatory Commission[,] now HLURB or the Housing and Land Use Regulatory Board). In a clarifying Memorandum dated February 14, 1990, Secretary of Justice Franklin M. Drilon opined that prior to June 15, 1988 which is the date of effectivity of RA 6657 or the Comprehensive Agrarian Reform Law of 1988, the powers of the HLURB and the Department of Finance to recategorize lands for land use and taxation purposes, respectively, were exclusive. **The point in this entire discourse is that at the time of Macario Susano's death in 1993, there was no longer any tenurial relationship to speak of[,] which could devolve upon the [p]laintiffs by right of succession[,] by virtue of the land's automatic recategorization as non-agricultural [land] in 1981.** This does not mean[,] however, that any existing legal rights created prior to the said reclassification may just be automatically shunted aside. On the contrary[,] while [p]laintiffs can no longer insist on physically holding on to the land in question[,] they may still rightfully claim payment of **disturbance**

compensation for and in behalf of the late Macario Susano, their predecessor-in-interest in an amount equivalent to five times the average of the gross harvest on (sic) their landholding during the last five preceding calendar years x x x.

x x x x x x x x x

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring the subject property more particularly described in paragraph 2 of the Complaint as no longer agricultural by virtue of its reclassification/conversion based on the duly approved Metro Manila Zoning Ordinance 81-01;

2. Dismissing the Complaint against the [d]efendant Julian Chan for lack of cause of action;

3. Directing the defendant Pastor Samson to pay to the [p]laintiffs 300 cavans or its money equivalent of ₱90,000.00 as and by way of disturbance compensation due to the late tenant Macario Susano;

4. Pending the payment of such disturbance compensation, maintaining the [p]laintiffs in their peaceful possession of the remaining area consisting of 7,316 square meters presently utilized as combination farmlot/homelot (sic);

5. Upon receipt of the said disturbance compensation, directing the [p]laintiffs to:

a) surrender peaceful possession of the 6,696 square meter portion of the subject property to the present owner Julian Chan and the homelot (sic) of 620 square meters to [d]efendant Pastor Samson'

b) remove their dwelling house erected on the said homelot (sic) after the lapse of 45 days following finality of judgment herein;

6. Allowing the withdrawal by [p]laintiffs of the redemption price deposited with the Office of the DAR Regional Cashier in the amount of ₱12,052.80;

7. Denying all other claims for lack of basis; and

8. Without pronouncement as to costs.

SO ORDERED.[37]

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[37] *Id.* at 263-266, 268-270. Emphasis supplied.

Unsatisfied, all of the parties filed their respective motions for reconsideration. Pastor assailed the Regional Adjudicator's finding that Macario was a bona fide and *de jure* tenant in the said landholding, as well as the order directing him to pay respondents disturbance compensation. Chan, for his part, sought reconsideration with respect to the pronouncement allowing respondents to maintain their peaceful possession of the 7,316-square meter property until they have been paid the computed disturbance compensation.

Meanwhile, respondents argued that there is no law authorizing the conversion of agricultural lands by the mere passage of a zoning ordinance. To support their contention, respondents cited the Court's pronouncement in *Co v. Intermediate Appellate Court*[38] to the effect that the passage of Metro Manila Zoning Ordinance No. 81-01 does not serve to convert existing agricultural lands in the covered area into residential lands or light industrial use lands nor does it have any retroactive effect as to discontinue all previously acquired rights on said lands. They also posit that the said zoning ordinance did not *ipso facto* convert agricultural lands into non-agricultural lands but merely provided for a guideline for future land use of affected areas.

On May 18, 1995, the Regional Adjudicator issued an Order[39] modifying her decision as follows:

> WHEREFORE, premises considered, the dispositive portion of the questioned decision of December 26, 1994 is PARTIALLY MODIFIED to read as follows:
>
> 1. Declaring the subject property more particularly described in paragraph 2 of the Complaint as no longer agricultural by virtue of its reclassification/conversion based on the duly approved Metro Manila Zoning Ordinance No. 81-01;
>
> 2. Dismissing the Complaint against the Defendant Julian Chan for lack of cause of action;

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[38] No. 65928, June 21, 1988, 162 SCRA 390, 396.

[39] Records, pp. 366-371.

3. Directing the Plaintiffs and all persons claiming right[s] under them to immediately vacate the 6,696 sq. m. portion of the subject property and surrender peaceful possession thereof to the present owner Julian Chan;

4. Directing the Defendant Pastor Samson to pay to the Plaintiffs 300 cavans of palay or its money equivalent of ₱90,000.00 as and by way of disturbance compensation to the late tenant Macario Susano;

5. Upon receipt of such payment for disturbance compensation, directing the Plaintiffs and all persons claiming rights under them to vacate the area utilized as homelot (sic) consisting of 620 square meters and surrender peaceful possession thereof to the Defendant Pastor Samson;

6. Allowing the withdrawal by Plaintiffs of the redemption price deposited with the Office of the DAR Regional Cashier in the amount of ₱12,052.80;

7. Denying all other claims for lack of basis; and

8. Without pronouncement as to costs.

SO ORDERED.[40]

The DARAB's Ruling

Upon appeal, the DARAB, on November 7, 2003, reversed the ruling of the RARAD. Anchoring its decision on this Court's pronouncement in *Co v. Intermediate Appellate Court*,[41] the DARAB explained that the issuance of an ordinance classifying the subject property into non-agricultural land did not have the effect of automatically converting the said land as non-agricultural land and terminating the tenancy relationship between the parties. The dispositive portion of the DARAB decision reads:

WHEREFORE, premises considered, the assailed decision and order are hereby REVERSED and SET ASIDE. A new judgment is entered:

1) Declaring the plaintiffs-appellants to be the lawful successors and tenants over the disputed landholding containing an area of 7,316 square meters;

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[40] *Id.* at 370-371.

[41] *Supra* note 38.

2) Ordering the defendants to respect and maintain the plaintiffs-appellants in the peaceful possession and cultivation of the subject landholding;

3) Recognizing the redemption right of [p]laintiffs-[a]ppellants in the 6,696 square-meter (sic) landholding;

4) Ordering [d]efendant Chan to reconvey the subject property to herein [p]laintiffs-[a]ppellants by executing a deed of reconveyance upon payment of the redemption price of ₱468,720.00 and allowing [d]efendant Chan to withdraw the amount of ₱12,052.80 from the DAR Regional Cashier, Region IV representing partial payment of the said price;

5) In the event that this decision shall have become final and executory, but [d]efendant Chan still refuses to execute the necessary document of reconveyance of the land in issue, the Register of Deeds of Caloocan City is hereby directed to register this decision in connection with the subject land covered by TCT No. 176758; afterwhich (sic) the Register of Deeds is hereby authorized to cancel TCT No. 176758 and in lieu thereof, to issue another Transfer Certificate of Title to and in the name of plaintiffs-appellants;

6) Directing the plaintiffs-appellants to coordinate with the Regional Director, Region IV or his duly authorized representative who shall initiate steps to obtain from the Land Bank financial assistance for redemption purposes of the subject property, pursuant to Section 12, R.A. 3844, as amended; [and]

7) Denying all claims and counterclaims for lack of merit.

No pronouncement as to cost.

SO ORDERED.[42]

Aggrieved, Pastor and Chan sought reconsideration of the said decision but their motions were denied for lack of merit.[43] Thus, they filed their respective petitions for review before the CA. The said appeals were later consolidated upon Pastor and Chan's motion.

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[42] *Rollo* (G.R. No. 179024), pp. 121-122.

[43] Records, p. 645.

During the pendency of the appeal, Pastor died on July 28, 2006 and was substituted by his estate represented by Rolando B. Samson.

The CA's Ruling

On August 31, 2006, the CA dismissed the appeal. The CA reasoned:

> x x x As borne by the records, Macario's cultivation of the property as well as [Pastor's] receipt of a portion of the produce therein lasted for a considerable length of time or more than thirty (30) years with nary a protest on the latter's part. To our mind, although petitioner [Pastor] did not expressly give his consent to a tenancy relation with Macario, we find that [Pastor's] acts are indicative of his implied consent to such relationship. Otherwise stated, by allowing Macario Susano to cultivate the subject landholding for a considerable length of time and by receiving a portion of the harvest therein, petitioner is deemed to have impliedly consented to a tenancy relationship with Macario. After all, it is well-settled in law that a tenancy relationship may be established either verbally or in writing, expressly or impliedly.[44]

The CA also held that Pastor and Macario's tenancy relationship was not extinguished despite the reclassification of the subject land into non-agricultural land in 1981 citing our ruling in *Alarcon v. Court of Appeals*.[45] The CA concluded that since the subject landholding was sold to Chan who, in turn, failed to notify Macario as required by law, the latter had the right to redeem the said property in accordance with Section 12[46] of R.A. No. 3844, as amended, or the Code of Agrarian Reforms of the Philippines.

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[44] *Rollo* (G.R. No. 179086), p. 48.

[45] G.R. No. 152085, July 8, 2003, 405 SCRA 440.

[46] SEC. 12. *Lessee's Right of Redemption*. — In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: *Provided*, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall

On July 27, 2007, the CA denied petitioners' motions for reconsideration. Hence, these consolidated petitions.

The Issues

In G.R. No. 179024, the estate of Pastor Samson argues that

> The Honorable Court of Appeals gravely erred in rendering its subject Decision affirming the findings of the RARAD *a quo* and DARAB that a tenancy relationship existed between the late Pastor M. Samson and the late Macario Susano.[47]

Petitioner Julian Chan, on the other hand, argues in G.R. No. 179086 that

> [I.] The Honorable Court of Appeals grievously erred in recognizing the residential status of the property in question and yet upholding the tenancy relation between Pastor Samson and Macario Susano and in binding herein petitioner thereto[;]
>
> [II.] The Honorable Court of Appeals grievously erred in misapplying the ruling of this Honorable Court in *Alarcon v. Court of Appeals*[; and]
>
> [III.] The Honorable Court of Appeals grievously erred in finding that respondents were entitled to the right of redemption and that the same may still be exercised by respondents.[48]

In sum, at the core of this case is the issue of whether respondents are entitled to the benefits of the OLT Program under P.D. No. 27.

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be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale.

Upon the filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred and eighty days shall cease to run.

Any petition or request for redemption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

The Department of Agrarian Reform shall initiate, while the Land Bank shall finance, said redemption as in the case of preemption.

[47] *Rollo* (G.R. No. 179024), p. 22.

[48] *Rollo* (G.R. No. 179086), p. 20.

The Court's Ruling

Respondents contend that the sale of Lot 1108-C to Chan is null and void for being contrary to the provisions of P.D. No. 27 and because at the time of the sale, ownership over the said property was already vested in Macario by virtue of the provisions of P.D. No. 27 on the OLT program.

Chan, for his part, maintained that Macario himself had recognized the validity of the sale of Lot 1108-C to him as shown in the *Kusang Loob na Pagtatalaga* (Deed of Undertaking), signed by Macario and witnessed by his family members in 1991, and the Joint Motion and Manifestation filed with the MARO of Valenzuela.[49] Chan also asserts that when he bought the land from Pastor, it was already classified as residential land following the passage of Metro Manila Zoning Ordinance No. 81-01 on March 18, 1981.

Meanwhile, the estate of Pastor Samson, by way of avoidance, insists that Macario was not Pastor's tenant, reiterating the earlier claim that Macario's occupancy on the said land was by mere tolerance. The estate also argues that if Macario was a tenant, he should have reacted and asserted his alleged rights under agrarian laws when the land he was cultivating was significantly reduced after portions thereof were sold in 1977 and 1984.[50]

We find in favor of petitioners. Applying our pronouncement in *Levardo v. Yatco*,[51] we rule that the subject land cannot be subject to the OLT program of P.D. No. 27 for two reasons: first, the subject land is less than seven hectares; and second, respondents failed to show that Pastor owned other agricultural lands in excess of seven hectares or urban land from which he derived adequate income, as required by Letter of Instruction (LOI) No. 474.[52]

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[49] *Id.* at 16.

[50] *Rollo* (G.R. No. 179024), p. 31.

[51] G.R. No. 165494, March 20, 2009, 582 SCRA 93, 103.

[52] The pertinent portion of LOI No. 474 reads:

TO: The Secretary of Agrarian Reform

Moreover, the DAR Memorandum on the "Interim Guidelines on Retention by Small Landowners" dated July 10, 1975 is explicit:

5. Tenanted rice and/or corn lands seven (7) hectares or less **shall not be covered** by Operation Land Transfer. The relation of the land owner and tenant-farmers in these areas shall be **leasehold** x x x[53]

However, while the disputed landholding which had an original aggregate area of only 1.0138 hectares is not covered by the OLT program, the same may still be covered by P.D. No. 27, albeit under its Operation Land Leasehold (OLL) program. The OLL program placed landowners and tenants of agricultural land devoted to rice and corn into a leasehold relationship as of October 21, 1972.[54] But the fact that Macario, respondents' predecessor-in-interest, was a *de jure* tenant must be established.

Chan maintains that the tenancy relationship between Pastor and Macario, if there was any, ceased following the reclassification of the subject land as belonging to the low intensity residential zone (I-1) as of March 18, 1981. His contention, however, lacks merit in light of our ruling in *Co v. Intermediate Appellate Court*,[55] wherein we said that Metro Manila Zoning Ordinance No. 81-01 did not have the effect of discontinuing rights previously acquired over lands located within the reclassified

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x x x x x x x x x

1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families. (Underscoring supplied.)

[53] Cited in *Levardo v. Yatco*, *supra* note 51. Emphasis supplied.

[54] *Rovillos v. Court of Appeals*, G.R. No. 113605, November 27, 1998, 299 SCRA 400, 407-408.

[55] *Supra* note 38.

zone which are neither residential nor light industrial in nature.[56] The zoning ordinance is given prospective operation only.[57]

So was Macario a *de jure* tenant in the subject landholding entitled to security of tenure?

On this score, we answer in the negative.

R.A. No. 1199,[58] otherwise known as the Agricultural Tenancy Act of the Philippines, defines a tenant as a person who, himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by, another, with the latter's consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying the landholder a price certain or ascertainable in produce or in money or both, under a leasehold tenancy system.[59]

For a tenancy relationship to exist between the parties, the following essential elements must be shown: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and (6) there is sharing of the harvests between the parties.[60] The presence of all of these elements must be proved by substantial evidence.[61]

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[56] *Id.* at 396.

[57] *Ortigas & Co., Ltd. v. Court of Appeals*, G.R. No. 126102, December 4, 2000, 346 SCRA 748, 756.

[58] Entitled "AN ACT TO GOVERN THE RELATIONS BETWEEN LANDHOLDERS AND TENANTS OF AGRICULTURAL LANDS (LEASEHOLD AND SHARE TENANCY)" approved on August 30, 1954.

[59] *Id.*, Sec. 5(a).

[60] *Landicho v. Sia*, G.R. No. 169472, January 20, 2009, 576 SCRA 602, 619; *Bejasa v. Court of Appeals*, G.R. No. 108941, July 6, 2000, 335 SCRA 190, 197-198.

[61] *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.*, G.R. No. 169589, June 16, 2009, 589 SCRA 236, 246.

Petitioner estate of Pastor Samson contends that the elements of consent and sharing of harvest are lacking since Macario's occupancy and possession of the subject land was only by mere tolerance.

Respondents, however, counter that there was implied tenancy because Pastor accepted his share of the production for a considerable length of time. To prove their contention, respondents presented the affidavits executed by three farmers from adjoining landholdings, namely Santiago Pacheco,[62] Apolinario Francisco,[63] and Damaso Matias,[64] stating that they knew Macario to be a tenant of Pastor since 1959 and that Macario religiously paid his share of the produce to Pastor.

The estate of Pastor Samson argues that the said affidavits are insufficient to establish the existence of a tenancy relationship since the affiants failed to provide details as to what the agreed rental was. No concrete evidence was presented by the respondents to prove their claim.[65]

We agree with said petitioner.

The question of whether a tenancy relationship exists is basically a question of fact which, as a general rule, is beyond the scope of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended.[66] The question of whether there was an implied tenancy and sharing are basically questions of fact and the findings of the Court of Appeals and the Boards *a quo* are, generally, entitled to respect and nondisturbance, as long as they are supported by substantial evidence.[67] Such findings of fact may be reviewed by the Court

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[62] Annex "H", CA *rollo* (CA-G.R. SP No. 89443), p. 91.

[63] Annex "I", *id.* at 92.

[64] Annex "J", *id.* at 93.

[65] *Rollo* (G.R. No. 179024), pp. 14 and 27.

[66] *Landicho v. Sia*, *supra* note 60 at 615; and *Cornes v. Leal Realty Centrum Co., Inc.*, G.R. No. 172146, July 30, 2008, 560 SCRA 545, 567.

[67] *Ramos Vda. de Brigino v. Ramos*, G.R. No. 130260, February 6, 2006, 481 SCRA 546, 553.

when the conclusion is a finding grounded entirely on speculation, surmises or conjectures,[68] or if the findings of fact are conclusions without citation of specific evidence on which they are based.[69]

In the case at bar, while the RARAD, DARAB and the CA are unanimous in their conclusion that an implied tenancy relationship existed between Pastor Samson and Macario Susano, no specific evidence was cited to support such conclusion other than their observation that Pastor failed to protest Macario's possession and cultivation over the subject land for more than 30 years. Contrary to what is required by law, however, no independent and concrete evidence were adduced by respondents to prove that there was indeed consent and sharing of harvests between Pastor and Macario.

It has been repeatedly held that occupancy and cultivation of an agricultural land will not *ipso facto* make one a *de jure* tenant.[70] Independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner.[71] Substantial evidence necessary to establish the fact of sharing cannot be satisfied by a mere scintilla of evidence; there must be concrete evidence on record adequate to prove the element of sharing. To prove sharing of harvests, a receipt or any other credible evidence must be presented, because self-serving statements are inadequate.[72] Tenancy relationship cannot be presumed;[73] the elements for its existence are explicit in law and cannot be done away with by conjectures.[74] Leasehold

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[68] *Joaquin v. Navarro*, 93 Phil. 257, 270 (1953).

[69] *Sacay v. Sandiganbayan*, Nos. 66497-98, July 10, 1986, 142 SCRA 593, 609.

[70] See *Heirs of Jose Barredo v. Besañes*, G.R. No. 164695, December 13, 2010, p. 6; *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.*, *supra* note 61; and *Landicho v. Sia*, *supra* note 60.

[71] *Landicho v. Sia*, *id.* at 619-620.

[72] *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.*, *supra* note 61 at 249.

[73] *Id.* at 246.

[74] *Id.* at 252.

relationship is not brought about by the mere congruence of facts but, being a legal relationship, the mutual will of the parties to that relationship should be primordial.[75] For implied tenancy to arise it is necessary that all the essential requisites of tenancy must be present.[76]

The affidavits executed by three of respondents' neighbors are insufficient to establish a finding of tenancy relationship between Pastor and Macario. As correctly observed by the estate of Pastor Samson, the affiants did not provide details based on their personal knowledge as to how the crop-sharing agreement was implemented, how much was given by Macario to Pastor, when and where the payments were made, or whether they have at any instance witnessed Pastor receive his share of the harvest from Macario. Such failure is fatal to respondents' claim particularly since the respondents have the burden of proving their affirmative allegation of tenancy.[77] In fine, the conclusions of the RARAD, DARAB and the CA respecting the existence of tenancy relationship between Pastor and Macario are not supported by substantial evidence on record.

The sale of the land to Chan likewise did not violate R.A. No. 3844 or the Agricultural Tenancy Act. Considering that respondents have failed to establish their status as *de jure* tenants, they have no right of pre-emption or redemption under Sections 11 and 12 of the said law.[78]

WHEREFORE, the petitions for review on *certiorari* are *GRANTED*. The assailed Decision dated August 31, 2006 and Resolution dated July 27, 2007 of the Court of Appeals in CA-G.R. SP Nos. 89052 and 89443 are *REVERSED* and *SET ASIDE*.

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[75] *VHJ Construction and Development Corporation v. Court of Appeals*, G.R. No. 128534, August 13, 2004, 436 SCRA 392, 398 as cited in *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.*, *supra* note 61 at 250.

[76] *Adriano v. Tanco*, G.R. No. 168164, July 5, 2010, 623 SCRA 218, 229.

[77] *Id.* at 230.

[78] See *NICORP Management and Development Corporation v. De Leon*, G.R. Nos. 176942 & 177125, August 28, 2008, 563 SCRA 606, 616-617.

Respondents Mercedes and Norberto R. Susano's action for maintenance of peaceful possession, docketed as DARAB Case No. IV-MM-0063-93, is *DISMISSED* for lack of merit. They are ordered to *SURRENDER* peaceful possession and occupation of Lot 1108-A-1, covered by TCT No. 137744, to the Estate of Pastor M. Samson, represented by Rolando B. Samson and Lot 1108-C, covered by TCT No. 176758, to petitioner Julian C. Chan.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179532. May 30, 2011]

CLAUDIO S. YAP, *petitioner, vs.* **THENAMARIS SHIP'S MANAGEMENT and INTERMARE MARITIME AGENCIES, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042); SECTION 10 THEREOF; A 3-MONTH CAP ON THE CLAIM OF ILLEGALLY DISMISSED OVERSEAS FILIPINO WORKERS WITH AN UNEXPIRED PORTION OF ONE YEAR OR MORE IN THEIR CONTRACTS IS UNCONSTITUTIONAL FOR BEING VIOLATIVE OF THE RIGHTS OF THE MIGRANT WORKERS TO EQUAL PROTECTION OF THE LAWS AND THE SUBSTANTIVE DUE PROCESS; DOCTRINE

IN SERRANO CASE (G.R. NO. 167614 MARCH 24, 2009), CITED AND APPLIED. — Verily, we have already declared in *Serrano* that the clause "*or for three months for every year of the unexpired term, whichever is less*" provided in the 5th paragraph of Section 10 of R.A. No. 8042 is unconstitutional for being violative of the rights of Overseas Filipino Workers (OFWs) to equal protection of the laws. In an exhaustive discussion of the intricacies and ramifications of the said clause, this Court, in *Serrano*, pertinently held: ***The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.*** Moreover, this Court held therein that the subject clause does not state or imply any definitive governmental purpose; hence, the same violates not just therein petitioner's right to equal protection, but also his right to substantive due process under Section 1, Article III of the Constitution. Consequently, petitioner therein was accorded his salaries for the entire unexpired period of nine months and 23 days of his employment contract, pursuant to law and jurisprudence prior to the enactment of R.A. No. 8042. We have already spoken. Thus, this case should not be different from *Serrano*.

2. POLITICAL LAW; STATUTES; GENERAL RULE; AN UNCONSTITUTIONAL ACT IS NOT A LAW; IT CONFERS NO RIGHTS, IMPOSES NO DUTIES, AFFORDS NO PROTECTION AND CREATES NO OFFICE; IT IS INOPERATIVE AS IF IT HAS NOT BEEN PASSED AT ALL; DOCTRINE OF OPERATIVE FACTS, AN EXCEPTION THERETO; NOT APPLICABLE. — As a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. 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. The doctrine of operative fact serves as an exception to the

aforementioned general rule. In *Planters Products, Inc. v. Fertiphil Corporation*, we held: 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. Following *Serrano*, we hold that this case should not be included in the aforementioned exception. After all, it was not the fault of petitioner that he lost his job due to an act of illegal dismissal committed by respondents. To rule otherwise would be iniquitous to petitioner and other OFWs, and would, in effect, send a wrong signal that principals/employers and recruitment/manning agencies may violate an OFW's security of tenure which an employment contract embodies and actually profit from such violation based on an unconstitutional provision of law.

3. REMEDIAL LAW; APPEALS; MATTERS NOT TAKEN UP BELOW CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. — [W]e cannot subscribe to respondents' postulation that the tanker allowance of US$130.00 should not be included in the computation of the lump-sum salary to be awarded to petitioner. [I]t is only at this late stage, more particularly in their Memorandum, that respondents are raising this issue. It was not raised before the LA, the NLRC, and the CA. They did not even assail the award accorded by the CA, which computed the lump-sum salary of petitioner at the basic salary of US$1,430.00, and which clearly included the US$130.00 tanker allowance. Hence, fair play, justice, and due process dictate that this Court cannot now, for the first time on appeal, pass upon this question. Matters not taken up below cannot be raised for the first time on appeal. They must be raised seasonably in the proceedings before the lower tribunals. Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised before the lower tribunals cannot be raised for the first time on appeal.

4. LABOR AND SOCIAL LEGISLATION; STANDARD EMPLOYMENT CONTRACT OF SEAFARERS; TANKER ALLOWANCE FORMS PART OF THE PETITIONER'S BASIC SALARY. — [R]espondents' invocation of *Serrano* is unavailing. Indeed, we made the following pronouncements in *Serrano*, to wit: **The word *salaries* in Section 10(5) does not include overtime and leave pay**. For seafarers like petitioner, DOLE Department Order No. 33, series 1996, provides a Standard Employment Contract of Seafarers, in which **salary is understood as the basic wage, exclusive of overtime, leave pay and other bonuses**; whereas overtime pay is compensation for all work "performed" in excess of the regular eight hours, and holiday pay is compensation for any work "performed" on designated rest days and holidays. A close perusal of the contract reveals that the tanker allowance of US$130.00 was not categorized as a bonus but was rather encapsulated in the basic salary clause, hence, forming part of the basic salary of petitioner. Respondents themselves in their petition for *certiorari* before the CA averred that petitioner's basic salary, pursuant to the contract, was "US$1,300.00 + US$130.00 tanker allowance." If respondents intended it differently, the contract *per se* should have indicated that said allowance does not form part of the basic salary or, simply, the contract should have separated it from the basic salary clause.

APPEARANCES OF COUNSEL

Noel & Noel Law Offices for petitioner.

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal

[1] *Rollo*, pp. 33-56.

of the Court of Appeals (CA) Decision[2] dated February 28, 2007, which affirmed with modification the National Labor Relations Commission (NLRC) resolution[3] dated April 20, 2005.

The undisputed facts, as found by the CA, are as follows:

> [Petitioner] Claudio S. Yap was employed as electrician of the vessel, M/T SEASCOUT on 14 August 2001 by Intermare Maritime Agencies, Inc. in behalf of its principal, Vulture Shipping Limited. The contract of employment entered into by Yap and Capt. Francisco B. Adviento, the General Manager of Intermare, was for a duration of 12 months. On 23 August 2001, Yap boarded M/T SEASCOUT and commenced his job as electrician. However, on or about 08 November 2001, the vessel was sold. The Philippine Overseas Employment Administration (POEA) was informed about the sale on 06 December 2001 in a letter signed by Capt. Adviento. Yap, along with the other crewmembers, was informed by the Master of their vessel that the same was sold and will be scrapped. They were also informed about the *Advisory* sent by Capt. Constatinou, which states, among others:
>
> " …PLEASE ASK YR OFFICERS AND RATINGS IF THEY WISH TO BE TRANSFERRED TO OTHER VESSELS AFTER VESSEL S DELIVERY (GREEK VIA ATHENS-PHILIPINOS VIA MANILA…
>
> …FOR CREW NOT WISH TRANSFER TO DECLARE THEIR PROSPECTED TIME FOR REEMBARKATION IN ORDER TO SCHEDULE THEM ACCLY…"
>
> Yap received his seniority bonus, vacation bonus, extra bonus along with the scrapping bonus. However, with respect to the payment of his wage, he refused to accept the payment of one-month basic wage. He insisted that he was entitled to the payment of the unexpired portion of his contract since he was illegally dismissed from employment. He alleged that he opted for immediate transfer but none was made.
>
> [Respondents], for their part, contended that Yap was not illegally dismissed. They alleged that following the sale of the M/T

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[2] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring; *id.* at 60-73.

[3] *Id.* at 166-170.

SEASCOUT, Yap signed off from the vessel on 10 November 2001 and was paid his wages corresponding to the months he worked or until 10 November 2001 plus his seniority bonus, vacation bonus and extra bonus. They further alleged that Yap's employment contract was validly terminated due to the sale of the vessel and no arrangement was made for Yap's transfer to Thenamaris' other vessels.[4]

Thus, Claudio S. Yap (petitioner) filed a complaint for Illegal Dismissal with Damages and Attorney's Fees before the Labor Arbiter (LA). Petitioner claimed that he was entitled to the salaries corresponding to the unexpired portion of his contract. Subsequently, he filed an amended complaint, impleading Captain Francisco Adviento of respondents Intermare Maritime Agencies, Inc. (Intermare) and Thenamaris Ship's Management (respondents), together with C.J. Martionos, Interseas Trading and Financing Corporation, and Vulture Shipping Limited/Stejo Shipping Limited.

On July 26, 2004, the LA rendered a decision[5] in favor of petitioner, finding the latter to have been constructively and illegally dismissed by respondents. Moreover, the LA found that respondents acted in bad faith when they assured petitioner of re-embarkation and required him to produce an electrician certificate during the period of his contract, but actually he was not able to board one despite of respondents' numerous vessels. Petitioner made several follow-ups for his re-embarkation but respondents failed to heed his plea; thus, petitioner was forced to litigate in order to vindicate his rights. Lastly, the LA opined that since the unexpired portion of petitioner's contract was less than one year, petitioner was entitled to his salaries for the unexpired portion of his contract for a period of nine months. The LA disposed, as follows:

WHEREFORE, in view of the foregoing, a decision is hereby rendered declaring complainant to have been constructively dismissed. Accordingly, respondents Intermare Maritime Agency Incorporated, Thenamaris Ship's Mgt., and Vulture Shipping Limited are ordered to pay jointly and severally complainant Claudio S. Yap the sum of

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[4] *Supra* note 2, at 63-65.

[5] *Rollo*, pp. 121-129.

$12,870.00 or its peso equivalent at the time of payment. In addition, moral damages of **ONE HUNDRED THOUSAND PESOS (₱100,000.00) and exemplary damages of FIFTY THOUSAND PESOS (₱50,000.00)** are awarded plus ten percent (10%) of the total award as attorney's fees.

Other money claims are **DISMISSED** for lack of merit.

SO ORDERED.[6]

Aggrieved, respondents sought recourse from the NLRC.

In its decision[7] dated January 14, 2005, the NLRC affirmed the LA's findings that petitioner was indeed constructively and illegally dismissed; that respondents' bad faith was evident on their wilful failure to transfer petitioner to another vessel; and that the award of attorney's fees was warranted. However, the NLRC held that instead of an award of salaries corresponding to nine months, petitioner was only entitled to salaries for three months as provided under Section 10[8] of Republic Act (R.A.) No. 8042,[9] as enunciated in our ruling in *Marsaman Manning Agency, Inc. v. National Labor Relations Commission*.[10] Hence, the NLRC ruled in this wise:

WHEREFORE, premises considered, the decision of the Labor Arbiter finding the termination of complainant illegal is hereby

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[6] *Id.* at 129.

[7] *Id.* at 130-149.

[8] The last clause in the 5th paragraph of Section 10, R.A. No. 8042, provides to wit:

Sec. 10. MONEY CLAIMS. — x x x.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries **for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less**. (Emphasis and underscoring supplied.)

[9] The Migrant Workers and Overseas Filipinos Act of 1995, effective July 15, 1995.

[10] 371 Phil. 827 (1999).

AFFIRMED with a MODIFICATION. Complainant['s] salary for the unexpired portion of his contract should only be limited to three (3) months basic salary.

Respondents Intermare Maritime Agency, Inc.[,] Vulture Shipping Limited and Thenamaris Ship Management are hereby ordered to jointly and severally pay complainant, the following:

1. Three (3) months basic salary – US$4,290.00 or its peso equivalent at the time of actual payment.
2. Moral damages – ₱100,000.00
3. Exemplary damages – ₱50,000.00
4. Attorney's fees equivalent to 10% of the total monetary award.

SO ORDERED.[11]

Respondents filed a Motion for Partial Reconsideration,[12] praying for the reversal and setting aside of the NLRC decision, and that a new one be rendered dismissing the complaint. Petitioner, on the other hand, filed his own Motion for Partial Reconsideration,[13] praying that he be paid the nine (9)-month basic salary, as awarded by the LA.

On April 20, 2005, a resolution[14] was rendered by the NLRC, affirming the findings of Illegal Dismissal and respondents' failure to transfer petitioner to another vessel. However, finding merit in petitioner's arguments, the NLRC reversed its earlier Decision, holding that "*there can be no choice to grant only three (3) months salary for every year of the unexpired term because there is no full year of unexpired term which this can be applied*." Hence —

WHEREFORE, premises considered, complainant's Motion for Partial Reconsideration is hereby granted. The award of three (3) months basic salary in the sum of US$4,290.00 is hereby modified in that complainant is entitled to his salary for the unexpired portion

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[11] *Supra* note 7, at 148-149.

[12] *Rollo*, pp. 157-163.

[13] *Id.* at 150-156.

[14] *Id.* at 166-170.

of employment contract in the sum of US$12,870.00 or its peso equivalent at the time of actual payment.

All aspect of our January 14, 2005 Decision **STANDS**.

SO ORDERED.[15]

Respondents filed a Motion for Reconsideration, which the NLRC denied.

Undaunted, respondents filed a petition for *certiorari*[16] under Rule 65 of the Rules of Civil Procedure before the CA. On February 28, 2007, the CA affirmed the findings and ruling of the LA and the NLRC that petitioner was constructively and illegally dismissed. The CA held that respondents failed to show that the NLRC acted without statutory authority and that its findings were not supported by law, jurisprudence, and evidence on record. Likewise, the CA affirmed the lower agencies' findings that the advisory of Captain Constantinou, taken together with the other documents and additional requirements imposed on petitioner, only meant that the latter should have been re-embarked. In the same token, the CA upheld the lower agencies' unanimous finding of bad faith, warranting the imposition of moral and exemplary damages and attorney's fees. However, the CA ruled that the NLRC erred in sustaining the LA's interpretation of Section 10 of R.A. No. 8042. In this regard, the CA relied on the clause "*or for three months for every year of the unexpired term, whichever is less*" provided in the 5th paragraph of Section 10 of R.A. No. 8042 and held:

> In the present case, the employment contract concerned has a term of one year or 12 months which commenced on August 14, 2001. However, it was preterminated without a valid cause. [Petitioner] was paid his wages for the corresponding months he worked until the 10th of November. Pursuant to the provisions of Sec. 10, [R.A. No.] 8042, therefore, the option of "three months for every year of the unexpired term" is applicable.[17]

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[15] *Id.* at 170.

[16] *Id.* at 171-196.

[17] *Supra* note 2, at 70.

Thus, the CA provided, to wit:

> WHEREFORE, premises considered, this Petition for *Certiorari* is **DENIED**. The *Decision* dated January 14, 2005, and ***Resolutions***, dated April 20, 2005 and July 29, 2005, respectively, of public respondent National Labor Relations Commission-Fourth Division, Cebu City, in NLRC No. V-000038-04 (RAB VIII (OFW)-04-01-0006) are hereby **AFFIRMED with the MODIFICATION** that private respondent is entitled to three (3) months of basic salary computed at US$4,290.00 or its peso equivalent at the time of actual payment.
>
> Costs against Petitioners.[18]

Both parties filed their respective motions for reconsideration, which the CA, however, denied in its Resolution[19] dated August 30, 2007.

Unyielding, petitioner filed this petition, raising the following issues:

1) Whether or not Section 10 of R.A. [No.] 8042, to the extent that it affords an **illegally** dismissed migrant worker the lesser benefit of – "salaries for [the] unexpired portion of his employment contract **or** for **three (3) months** for every **year** of the unexpired term, **whichever is less**" – is constitutional; and

2) Assuming that it is, whether or not the Court of Appeals gravely erred in granting petitioner only three (3) months backwages when his unexpired term of 9 months is **far short** of the "**every year** of the unexpired term" threshold.[20]

In the meantime, while this case was pending before this Court, we declared as unconstitutional the clause "*or for three months for every year of the unexpired term, whichever is less*" provided in the 5th paragraph of Section 10 of R.A. No. 8042 in the case of *Serrano v. Gallant Maritime Services, Inc.*[21] on March 24, 2009.

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[18] *Id.* at 72-73.

[19] *Rollo*, pp. 96-99.

[20] *Supra* note 1, at 44-45.

[21] G.R. No. 167614, March 24, 2009, 582 SCRA 254.

Apparently, unaware of our ruling in *Serrano*, petitioner claims that the 5th paragraph of Section 10, R.A. No. 8042, is violative of Section 1,[22] Article III and Section 3,[23] Article XIII of the Constitution to the extent that it gives an erring employer the option to pay an illegally dismissed migrant worker only three months for every year of the unexpired term of his contract; that said provision of law has long been a source of abuse by callous employers against migrant workers; and that said provision violates the equal protection clause under the Constitution because, while illegally dismissed local workers are guaranteed under the Labor Code of reinstatement with full backwages computed from the time compensation was withheld from them up to their actual reinstatement, migrant workers, by virtue of Section 10 of R.A. No. 8042, have to waive nine months of their collectible backwages every time they have a year of unexpired term of contract to reckon with. Finally, petitioner posits that, assuming said provision of law is constitutional, the CA gravely abused its discretion when it reduced petitioner's backwages from nine months to three months as his nine-month unexpired term cannot accommodate the lesser relief of three months for every year of the unexpired term.[24]

On the other hand, respondents, aware of our ruling in *Serrano*, aver that our pronouncement of unconstitutionality of the clause "*or for three months for every year of the unexpired term, whichever is less*" provided in the 5th paragraph of Section 10 of R.A. No. 8042 in *Serrano* should not apply in this case because Section 10 of R.A. No. 8042 is a substantive law that deals with the rights and obligations of the parties in case of Illegal

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[22] Section 1, Article III of the Constitution provides:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[23] Section 3, Article XIII of the Constitution pertinently provides:

Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

[24] *Rollo*, pp. 312-331.

Dismissal of a migrant worker and is not merely procedural in character. Thus, pursuant to the Civil Code, there should be no retroactive application of the law in this case. Moreover, respondents asseverate that petitioner's tanker allowance of US$130.00 should not be included in the computation of the award as petitioner's basic salary, as provided under his contract, was only US$1,300.00. Respondents submit that the CA erred in its computation since it included the said tanker allowance. Respondents opine that petitioner should be entitled only to US$3,900.00 and not to US$4,290.00, as granted by the CA. Invoking *Serrano*, respondents claim that the tanker allowance should be excluded from the definition of the term "salary." Also, respondents manifest that the full sum of ₱878,914.47 in Intermare's bank account was garnished and subsequently withdrawn and deposited with the NLRC Cashier of Tacloban City on February 14, 2007. On February 16, 2007, while this case was pending before the CA, the LA issued an Order releasing the amount of ₱781,870.03 to petitioner as his award, together with the sum of ₱86,744.44 to petitioner's former lawyer as attorney's fees, and the amount of ₱3,570.00 as execution and deposit fees. Thus, respondents pray that the instant petition be denied and that petitioner be directed to return to Intermare the sum of US$8,970.00 or its peso equivalent.[25]

On this note, petitioner counters that this new issue as to the inclusion of the tanker allowance in the computation of the award was not raised by respondents before the LA, the NLRC and the CA, nor was it raised in respondents' pleadings other than in their Memorandum before this Court, which should not be allowed under the circumstances.[26]

The petition is impressed with merit.

Prefatorily, it bears emphasis that the unanimous finding of the LA, the NLRC and the CA that the dismissal of petitioner was illegal is not disputed. Likewise not disputed is the tribunals' unanimous finding of bad faith on the part of respondents, thus,

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[25] *Id.* at 290-303.

[26] *Supra* note 24.

warranting the award of moral and exemplary damages and attorney's fees. What remains in issue, therefore, is the constitutionality of the 5th paragraph of Section 10 of R.A. No. 8042 and, necessarily, the proper computation of the lump-sum salary to be awarded to petitioner by reason of his illegal dismissal.

Verily, we have already declared in *Serrano* that the clause "*or for three months for every year of the unexpired term, whichever is less*" provided in the 5th paragraph of Section 10 of R.A. No. 8042 is unconstitutional for being violative of the rights of Overseas Filipino Workers (OFWs) to equal protection of the laws. In an exhaustive discussion of the intricacies and ramifications of the said clause, this Court, in *Serrano,* pertinently held:

The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.[27]

Moreover, this Court held therein that the subject clause does not state or imply any definitive governmental purpose; hence, the same violates not just therein petitioner's right to equal protection, but also his right to substantive due process under Section 1, Article III of the Constitution.[28] Consequently, petitioner therein was accorded his salaries for the entire unexpired period of nine months and 23 days of his employment contract, pursuant to law and jurisprudence prior to the enactment of R.A. No. 8042.

We have already spoken. Thus, this case should not be different from *Serrano*.

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[27] *Supra* note 21, at 295.

[28] *Id.* at 303.

As a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. 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.

The doctrine of operative fact serves as an exception to the aforementioned general rule. In *Planters Products, Inc. v. Fertiphil Corporation*,[29] we held:

> 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.[30]

Following *Serrano*, we hold that this case should not be included in the aforementioned exception. After all, it was not the fault of petitioner that he lost his job due to an act of illegal dismissal committed by respondents. To rule otherwise would be iniquitous to petitioner and other OFWs, and would, in effect, send a wrong signal that principals/employers and recruitment/manning agencies may violate an OFW's security of tenure which an employment contract embodies and actually profit from such violation based on an unconstitutional provision of law.

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[29] G.R. No. 166006, March 14, 2008, 548 SCRA 485.

[30] *Id.* at 516-517. (Citations omitted.)

In the same vein, we cannot subscribe to respondents' postulation that the tanker allowance of US$130.00 should not be included in the computation of the lump-sum salary to be awarded to petitioner.

First. It is only at this late stage, more particularly in their Memorandum, that respondents are raising this issue. It was not raised before the LA, the NLRC, and the CA. They did not even assail the award accorded by the CA, which computed the lump-sum salary of petitioner at the basic salary of US$1,430.00, and which clearly included the US$130.00 tanker allowance. Hence, fair play, justice, and due process dictate that this Court cannot now, for the first time on appeal, pass upon this question. Matters not taken up below cannot be raised for the first time on appeal. They must be raised seasonably in the proceedings before the lower tribunals. Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised before the lower tribunals cannot be raised for the first time on appeal.[31]

Second. Respondents' invocation of *Serrano* is unavailing. Indeed, we made the following pronouncements in *Serrano*, to wit:

> **The word *salaries* in Section 10(5) does not include overtime and leave pay**. For seafarers like petitioner, DOLE Department Order No. 33, series 1996, provides a Standard Employment Contract of Seafarers, in which **salary is understood as the basic wage, exclusive of overtime, leave pay and other bonuses**; whereas overtime pay is compensation for all work "performed" in excess of the regular eight hours, and holiday pay is compensation for any work "performed" on designated rest days and holidays.[32]

A close perusal of the contract reveals that the tanker allowance of US$130.00 was not categorized as a bonus but was rather encapsulated in the basic salary clause, hence, forming part of the basic salary of petitioner. Respondents themselves in their

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[31] *Ayson v. Vda. De Carpio*, 476 Phil. 525, 535 (2004).

[32] *Supra* note 21, at 303. (Emphasis supplied.)

petition for *certiorari* before the CA averred that petitioner's basic salary, pursuant to the contract, was "US$1,300.00 + US$130.00 tanker allowance."[33] If respondents intended it differently, the contract *per se* should have indicated that said allowance does not form part of the basic salary or, simply, the contract should have separated it from the basic salary clause.

A final note.

We ought to be reminded of the plight and sacrifices of our OFWs. In *Olarte v. Nayona*,[34] this Court held that:

> Our overseas workers belong to a disadvantaged class. Most of them come from the poorest sector of our society. Their profile shows they live in suffocating slums, trapped in an environment of crimes. Hardly literate and in ill health, their only hope lies in jobs they find with difficulty in our country. Their unfortunate circumstance makes them easy prey to avaricious employers. They will climb mountains, cross the seas, endure slave treatment in foreign lands just to survive. Out of despondence, they will work under sub-human conditions and accept salaries below the minimum. The least we can do is to protect them with our laws.

WHEREFORE, the Petition is *GRANTED*. The Court of Appeals Decision dated February 28, 2007 and Resolution dated August 30, 2007 are hereby *MODIFIED* to the effect that petitioner is *AWARDED* his salaries for the entire unexpired portion of his employment contract consisting of nine months computed at the rate of US$1,430.00 per month. All other awards are hereby *AFFIRMED*. No costs.

SO ORDERED.

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

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[33] *Supra* note 16, at 173.

[34] 461 Phil. 429, 431 (2003).

SECOND DIVISION

[G.R. No. 181626. May 30, 2011]

SANTIAGO PAERA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES; COURTS GENERALLY REFUSE TO PASS UPON FRESHLY RAISED THEORIES. — Although uncommented, petitioner's adoption of new theories for the first time before this Court has not escaped our attention. Elementary principles of due process forbid this pernicious procedural strategy — it not only catches off-guard the opposing party, it also denies judges the analytical benefit uniform theorizing affords. Thus, courts generally refuse to pass upon freshly raised theories. We would have applied this rule here were it not for the fact that petitioner's liberty is at stake and the OSG partially views his cause with favor.

2. CRIMINAL LAW; GRAVE THREATS; CONSUMMATED AS SOON AS THE THREATS COME TO THE KNOWLEDGE OF THE PERSON THREATENED; UTTERANCE OF THREATENING REMARKS AT DIFFERENT POINTS IN TIME TO THREE INDIVIDUALS, ALBEIT IN RAPID SUCCESSION, CONSTITUTES THREE SEPARATE CRIMINAL LIABILITIES. — Article 282 of the RPC holds liable for Grave Threats "any person who shall threaten another with the infliction upon the person x x x of the latter or his family of any wrong amounting to a crime[.]" This felony is consummated "as soon as the threats come to the knowledge of the person threatened." Applying these parameters, it is clear that petitioner's threat to kill Indalecio and Diosetea and crack open Vicente's skull are wrongs on the person amounting to (at the very least) homicide and serious physical injuries as penalized under the RPC. These threats were consummated as soon as Indalecio, Diosetea, and Vicente heard petitioner utter his threatening remarks. Having spoken the threats at different points in time to these three individuals, albeit in rapid succession, petitioner incurred three separate criminal liabilities.

3. ID.; ID.; CONCEPTS OF COMPLEX AND CONTINUED CRIME, NOT APPLICABLE. — Petitioner's theory fusing his liability to one count of Grave Threats because he only had "a single mental resolution, a single impulse, and single intent" to threaten the Darongs assumes a vital fact: that he had foreknowledge of Indalecio, Diosetea, and Vicente's presence near the water tank in the morning of 8 April 1999. The records, however, belie this assumption. The importance of foreknowledge of a vital fact to sustain a claim of "continued crime" undergirded our ruling in *Gamboa v. Court of Appeals*. There, the accused, as here, conceded liability to a lesser crime — one count of estafa, and not 124 as charged — theorizing that his conduct was animated by a single fraudulent intent to divert deposits over a period of several months. We rejected the claim — [f]or the simple reason that [the accused] was not possessed of any fore-knowledge of any deposit by any customer on any day or occasion and which would pass on to his possession and control. x x x. Similarly, petitioner's intent to threaten Indalecio, Diosetea, and Vicente with bodily harm arose only when he chanced upon each of his victims. x x x. Having disposed of petitioner's theory on the nature of his offense, we see no reason to extensively pass upon his use of the notion of complex crime to avail of its liberal penalty scheme. It suffices to state that under Article 48 of the RPC, complex crimes encompass either (1) an act which constitutes two or more grave or less grave offenses; or (2) an offense which is a necessary means for committing another and petitioner neither performed a single act resulting in less or less grave crimes nor committed an offense as a means of consummating another.

4. ID.; ID.; PRESENTATION OF PRIVATE COMPLAINANT IS NOT A CONDITION FOR FINDING GUILT FOR GRAVE THREATS, ESPECIALLY IF THERE WERE OTHER VICTIMS AND WITNESSES WHO ATTESTED TO ITS COMMISSION AGAINST THE NON-TESTIFYING COMPLAINANT. — We find no reversible error in the RTC's affirmance of the MCTC's ruling, holding petitioner liable for Grave Threats against Vicente. The prosecution's evidence, consisting of the testimonies of Indalecio, Diosetea and two other corroborating witnesses, indisputably show petitioner threatening Vicente with death. Vicente's inability to take the stand, for documented medical reason, does not detract from the veracity and strength of the prosecution evidence. Petitioner's

claim of denial of his constitutional right to confront witnesses is untenable as he had every opportunity to cross-examine the four prosecution witnesses. No law requires the presentation of the private complainant as condition for finding guilt for Grave Threats, especially if, as here, there were other victims and witnesses who attested to its commission against the non-testifying complainant. Significantly, petitioner did not raise Vicente's non-appearance as an issue during the trial, indicating that he saw nothing significant in the latter's absence.

5. ID.; JUSTIFYING CIRCUMSTANCES; DEFENSE OF A STRANGER; REQUISITES; NOT PRESENT. — There is likewise no merit in petitioner's claim of having acted to "defend[] and protect[] the water rights of his constituents" in the lawful exercise of his office as *punong barangay*. The defense of stranger rule under paragraph 3, Article 11 of the RPC, which negates criminal liability of — [a]nyone who acts in the defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment or other evil motive requires proof of (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) absence of evil motives such as revenge and resentment. None of these requisites obtain here.

6. ID.; ID.; FULFILLMENT OF DUTY OR EXERCISE OF OFFICE; TO BE APPRECIATED, THERE MUST BE PROOF THAT THE OFFENSE COMMITTED WAS THE NECESSARY CONSEQUENCE OF THE DUE PERFORMANCE OF DUTY OR THE LAWFUL EXERCISE OF OFFICE; THE USE OF VIOLENCE OR THREATS OF VIOLENCE BY THE LOCAL ELECTIVE OFFICIALS TO ENSURE THE DELIVERY OF BASIC SERVICES IS OUTSIDE THE AMBIT OF CRIMINALLY IMMUNE OFFICIAL CONDUCT. — [T]he justifying circumstance of fulfillment of duty or exercise of office under the 5th paragraph of Article 11 of the RPC lies upon proof that the offense committed was the necessary consequence of the ***due*** performance of duty or the ***lawful*** exercise of office. Arguably, petitioner acted in the performance of his duty to "ensure delivery of basic services" when he barred the Darongs' access to the communal water tank. Nevertheless, petitioner exceeded the

bounds of his office when he successively chased the Darongs with a bladed weapon, threatening harm on their persons, for violating his order. A number of options constituting lawful and due discharge of his office lay before petitioner and his resort to any of them would have spared him from criminal liability. His failure to do so places his actions outside of the ambit of criminally immune official conduct. Petitioner ought to know that no amount of concern for the delivery of services justifies use by local elective officials of violence or threats of violence.

APPEARANCES OF COUNSEL

Obar Partners & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This resolves the petition for review[1] of the ruling[2] of the Regional Trial Court of Dumaguete City[3] (RTC) finding petitioner Santiago Paera guilty of three counts of Grave Threats, in violation of Article 282 of the Revised Penal Code (RPC).

The Facts

As *punong barangay* of Mampas, Bacong, Negros Oriental, petitioner Santiago Paera (petitioner) allocated his constituents' use of communal water coming from a communal tank by limiting distribution to the residents of Mampas, Bacong. The tank sits on a land located in the neighboring barangay of Mampas, Valencia and owned by complainant Vicente Darong (Vicente), father of complainant Indalecio Darong (Indalecio). Despite

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Dated 28 November 2007, penned by Judge Arlene Catherine A. Dato.

[3] Branch 39.

petitioner's scheme, Indalecio continued drawing water from the tank. On 7 April 1999, petitioner reminded Indalecio of the water distribution scheme and cut Indalecio's access.

The following day, petitioner inspected the tank after constituents complained of water supply interruption. Petitioner discovered a tap from the main line which he promptly disconnected. To stem the flow of water from the ensuing leak, petitioner, using a borrowed bolo, fashioned a wooden plug. It was at this point when Indalecio arrived. What happened next is contested by the parties.

According to the prosecution, petitioner, without any warning, picked-up his bolo and charged towards Indalecio, shouting "*Patyon tikaw*!" (I will kill you!). Indalecio ran for safety, passing along the way his wife, Diosetea Darong (Diosetea) who had followed him to the water tank. Upon seeing petitioner, Diosetea inquired what was the matter. Instead of replying, petitioner shouted "*Wala koy gipili, bisag babaye ka, patyon tikaw*!" ("I don't spare anyone, even if you are a woman, I will kill you!"). Diosetea similarly scampered and sought refuge in the nearby house of a relative. Unable to pursue Diosetea, petitioner turned his attention back to Indalecio. As petitioner chased Indalecio, he passed Vicente, and, recognizing the latter, repeatedly thrust his bolo towards him, shouting "*Bisag gulang ka, buk-on nako imo ulo*!" ("Even if you are old, I will crack open your skull!").

According to petitioner, however, it was Indalecio who threatened him with a bolo, angrily inquiring why petitioner had severed his water connection. This left petitioner with no choice but to take a defensive stance using the borrowed bolo, prompting Indalecio to scamper.

Except for Vicente, who was seriously ill, the Darongs testified during trial. Petitioner was the defense's lone witness.

The Ruling of the Municipal Circuit Trial Court

The 7th Municipal Circuit Trial Court of Valencia-Bacong, Negros Oriental (MCTC) found petitioner guilty as charged, ordering petitioner to serve time and pay fine for each of the

three counts.[4] The MCTC found the prosecution evidence sufficient to prove the elements of Grave Threats under Article 282, noting that the Darongs' persistent water tapping contrary to petitioner's directive "must have angered" petitioner, triggering his criminal behavior.[5] The MCTC rejected petitioner's defense of denial as "self-serving and uncorroborated."[6]

Petitioner appealed to the RTC, reiterating his defense of denial.

Ruling of the Regional Trial Court

The RTC affirmed the MCTC, sustaining the latter's finding on petitioner's motive. The RTC similarly found unconvincing petitioner's denial in light of the "clear, direct, and consistent" testimonies of the Darongs and other prosecution witnesses.[7]

Hence, this appeal.

Abandoning his theory below, petitioner now concedes his liability but only for a single count of the "continued complex crime" of Grave Threats. Further, petitioner prays for the dismissal of the case filed by Vicente as the latter's failure to testify allegedly deprived him of his constitutional right to confront witnesses. Alternatively, petitioner claims he is innocent of the charges for having acted in defense of the property of strangers and in lawful performance of duty, justifying circumstances under paragraphs 3 and 5, Article 11 of the RPC.[8]

In its Comment, the Office of the Solicitor General (OSG) finds merit in petitioner's concession of liability for the single

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[4] The dispositive portion of the MCTC's ruling provides (*Rollo*, p. 171):

> WHEREFORE, judgment is hereby rendered finding accused Santiago Paera GUILTY beyond reasonable doubt of the crime of Grave Threats under paragraph 2, Article 282 of the Revised Penal Code, as amended, in all the above-entitled cases, and the Court hereby sentences him the penalty of two (2) months and one (1) day to four (4) months of *arresto mayor* and FINE of Five Hundred Pesos (₱500.00) for each case.

[5] *Id.* at 170.

[6] *Id.* at 171.

[7] *Id.* at 39.

[8] *Id.* at 21-28.

count of the "continued complex crime" of Grave Threats. The OSG, however, rejects petitioner's prayer for the dismissal of Vicente's complaint, arguing that petitioner's guilt was amply proven by the prosecution evidence, not to mention that petitioner failed to raise this issue during trial. Further, the OSG finds the claim of defense of stranger unavailing for lack of unlawful aggression on the part of the Darongs. Lastly, the OSG notes the absence of regularity in petitioner's performance of duty to justify his conduct.[9]

The Issue

The question is whether petitioner is guilty of three counts of Grave Threats.

The Ruling of the Court

We rule in the affirmative, deny the petition and affirm the RTC.

Due Process Mischief in Raising New Issues on Appeal

Although uncommented, petitioner's adoption of new theories for the first time before this Court has not escaped our attention. Elementary principles of due process forbid this pernicious procedural strategy - it not only catches off-guard the opposing party, it also denies judges the analytical benefit uniform theorizing affords. Thus, courts generally refuse to pass upon freshly raised theories.[10] We would have applied this rule here were it not for the fact that petitioner's liberty is at stake and the OSG partially views his cause with favor.

Petitioner Liable for Three Counts of Grave Threats

To limit his liability to one count of Grave Threats, petitioner tries to fit the facts of the case to the concept of "continued crime" (*delito continuado*) which envisages a single crime

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[9] *Id.* at 190-200.

[10] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, G.R. No. 166461, 30 April 2010, 619 SCRA 609.

committed through a series of acts arising from one criminal intent or resolution.[11] To fix the penalty for his supposed single continued crime, petitioner invokes the rule for complex crime under Article 48 of the RPC imposing the penalty for the most serious crime, applied in its maximum period.

The nature of the crime of Grave Threats and the proper application of the concepts of continued and complex crimes preclude the adoption of petitioner's theory.

Article 282 of the RPC holds liable for Grave Threats "any person who shall threaten another with the infliction upon the person x x x of the latter or his family of any wrong amounting to a crime[.]" This felony is consummated "as soon as the threats come to the knowledge of the person threatened."[12]

Applying these parameters, it is clear that petitioner's threat to kill Indalecio and Diosetea and crack open Vicente's skull are wrongs on the person amounting to (at the very least) homicide and serious physical injuries as penalized under the RPC. These threats were consummated as soon as Indalecio, Diosetea, and Vicente heard petitioner utter his threatening remarks. Having spoken the threats at different points in time to these three individuals, albeit in rapid succession, petitioner incurred three separate criminal liabilities.

Petitioner's theory fusing his liability to one count of Grave Threats because he only had "a single mental resolution, a single impulse, and single intent"[13] to threaten the Darongs assumes a vital fact: that he had foreknowledge of Indalecio, Diosetea, and Vicente's presence near the water tank in the morning of 8 April 1999. The records, however, belie this assumption. Thus, in the case of Indalecio, petitioner was as much surprised to see Indalecio as the latter was in seeing petitioner when they

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[11] *Santiago v. Garchitorena*, G.R. No. 109266, 2 December 1993, 228 SCRA 214, 224, *citing* PADILLA, *CRIMINAL LAW* 53-54 (1988).

[12] *People v. Villanueva*, Nos. 3133-3144-R, 27 February 1950, 48 O.G. 1376 (No. 4), 1381.

[13] *Rollo*, p. 22.

chanced upon each other near the water tank. Similarly, petitioner came across Diosetea as he was chasing Indalecio who had scampered for safety. Lastly, petitioner crossed paths with Vicente while running after Indalecio. Indeed, petitioner went to the water tank not to execute his "single intent" to threaten Indalecio, Diosetea, and Vicente but to investigate a suspected water tap. Not having known in advance of the Darongs' presence near the water tank at the time in question, petitioner could not have formed any intent to threaten any of them until shortly before he inadvertently came across each of them.

The importance of foreknowledge of a vital fact to sustain a claim of "continued crime" undergirded our ruling in *Gamboa v. Court of Appeals*.[14] There, the accused, as here, conceded liability to a lesser crime — one count of estafa, and not 124 as charged — theorizing that his conduct was animated by a single fraudulent intent to divert deposits over a period of several months. We rejected the claim —

> [f]or the simple reason that [the accused] was not possessed of any fore-knowledge of any deposit by any customer on any day or occasion and which would pass on to his possession and control. At most, his intent to misappropriate may arise only when he comes in possession of the deposits on each business day but not *in futuro*, since petitioner company operates only on a day-to-day transaction. As a result, there could be as many acts of misappropriation as there are times the private respondent abstracted and/or diverted the deposits to his own personal use and benefit.[15] x x x x (Emphasis supplied)

Similarly, petitioner's intent to threaten Indalecio, Diosetea, and Vicente with bodily harm arose only when he chanced upon each of his victims.

Indeed, petitioner's theory holds water only if the facts are altered — that is, he threatened Indalecio, Diosetea, and Vicente at the *same place and at the same time*. Had this been true, then petitioner's liability for one count of Grave Threats would have rested on the same basis grounding our rulings that the

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[14] 160-A Phil. 962 (1975).

[15] *Id.* at 971.

taking of six roosters[16] or 13 cows[17] found at the same place and taken at the same time results in the commission of only one count of theft because —

> [t]here is no series of acts committed for the accomplishment of different purposes, but only of one which was *consummated*, and which determines the existence of only one crime. The act of taking the roosters [and heads of cattle] in the *same* place and on the *same* occasion cannot give rise to two crimes having an independent existence of their own, because there are *not two distinct appropriations nor two intentions* that characterize two separate crimes.[18] (Emphasis in the original)

Having disposed of petitioner's theory on the nature of his offense, we see no reason to extensively pass upon his use of the notion of complex crime to avail of its liberal penalty scheme. It suffices to state that under Article 48 of the RPC, complex crimes encompass either (1) an act which constitutes two or more grave or less grave offenses; or (2) an offense which is a necessary means for committing another[19] and petitioner neither performed a single act resulting in less or less grave crimes nor committed an offense as a means of consummating another.

The Prosecution Proved the Commission of Grave Threats Against Vicente

We find no reversible error in the RTC's affirmance of the MCTC's ruling, holding petitioner liable for Grave Threats against Vicente. The prosecution's evidence, consisting of the testimonies of Indalecio, Diosetea and two other corroborating witnesses,[20]

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[16] *People v. Jaranilla*, 154 Phil. 516 (1974). See also *People v. De Leon*, 49 Phil. 437 (1926) (involving conviction for one count of theft for the taking of two roosters).

[17] *People v. Tumlos*, 67 Phil. 320 (1939).

[18] *Gamboa v. Court of Appeals*, *supra* note 14 at 970 (internal citations omitted).

[19] Article 48 provides: "*Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

[20] Pedro Salvoro and Roberto Pontonilla.

indisputably show petitioner threatening Vicente with death.[21] Vicente's inability to take the stand, for documented medical reason,[22] does not detract from the veracity and strength of the prosecution evidence. Petitioner's claim of denial of his constitutional right to confront witnesses is untenable as he had every opportunity to cross-examine the four prosecution witnesses. No law requires the presentation of the private complainant as condition for finding guilt for Grave Threats, especially if, as here, there were other victims and witnesses who attested to its commission against the non-testifying complainant. Significantly, petitioner did not raise Vicente's non-appearance as an issue during the trial, indicating that he saw nothing significant in the latter's absence.

No Justifying Circumstances Attended Petitioner's Commission of Grave Threats

There is likewise no merit in petitioner's claim of having acted to "defend[] and protect[] the water rights of his constituents" in the lawful exercise of his office as *punong barangay*.[23] The defense of stranger rule under paragraph 3, Article 11 of the RPC, which negates criminal liability of —

> [a]nyone who acts in the defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment or other evil motive.

requires proof of (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) absence of evil motives such as revenge and resentment.[24] None of these requisites obtain here. Not one of the Darongs committed acts of aggression against third parties' rights when petitioner successively threatened them with bodily

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[21] *Rollo*, p. 169.

[22] The prosecution presented in evidence the certification of Dr. Fe V. Tagimacruz, municipal health officer of Valencia, Negros Oriental, attesting that Vicente suffered from Alzheimer's disease (*id.*).

[23] *Rollo*, pp. 24-25.

[24] The first two requisites correspond to the first two requirements under the first paragraph of the provision.

harm. Indeed, all of them were performing ordinary, peaceful acts — Indalecio was standing near the water tank, Diosetea was walking towards Indalecio and Vicente was standing in the vegetable garden a few meters away. With the element of unlawful aggression absent, inquiry on the reasonableness of the means petitioner used to prevent or repel it is rendered irrelevant. As for the third requisite, the records more than support the conclusion that petitioner acted with resentment, borne out of the Darongs' repeated refusal to follow his water distribution scheme, causing him to lose perspective and angrily threaten the Darongs with bodily harm.

Lastly, the justifying circumstance of fulfillment of duty or exercise of office under the 5th paragraph of Article 11 of the RPC lies upon proof that the offense committed was the necessary consequence of the ***due*** performance of duty or the ***lawful*** exercise of office.[25] Arguably, petitioner acted in the performance of his duty to "ensure delivery of basic services"[26] when he barred the Darongs' access to the communal water tank. Nevertheless, petitioner exceeded the bounds of his office when he successively chased the Darongs with a bladed weapon, threatening harm on their persons, for violating his order. A number of options constituting lawful and due discharge of his office lay before petitioner[27] and his resort to any of them would have spared him from criminal liability. His failure to do so places his actions outside of the ambit of criminally immune official conduct. Petitioner ought to know that no amount of concern for the delivery of services justifies use by local elective officials of violence or threats of violence.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 28 November 2007 of the Regional Trial Court of Dumaguete City, Branch 39.

SO ORDERED.

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

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[25] *People v. Pajenado,* 161 Phil. 234 (1976).

[26] Republic Act No. 7160, Section 389(b)(12).

[27] Among others, petitioner could have given the Darongs a final warning or, dispensing with such, immediately sought injunctive relief from the courts.

FIRST DIVISION

[G.R. No. 182690. May 30, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO OGARTE *Y* OCOB,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION FOR RAPE; GUIDING PRINCIPLE IN THE REVIEW OF RAPE CASES. — In reviewing rape cases, this Court is guided by three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Rape is a serious transgression with severe consequences for both the accused and the complainant. Using the above guiding principles in the review of rape cases, this Court is thus obligated to conduct a comprehensive and extensive assessment of a judgment of conviction for rape. This Court has thoroughly scrutinized the entire records of the case, and has found no reason to reverse the courts below.

2. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCE OF AGE AND RELATIONSHIP; A CERTIFICATION FROM THE OFFICE OF THE LOCAL CIVIL REGISTRAR CONCERNING THE DATE OF BIRTH OF THE RAPE VICTIM QUALIFIES AS AN AUTHENTIC DOCUMENT TO PROVE HER AGE. — The qualifying circumstances of age and relationship were not only properly alleged in the information but were also duly established by the prosecution during the trial of the cases against Ogarte. Records show that AAA submitted a certification from the Office of the Local Civil Registrar of Labason, Zamboanga del Norte that her birth records appear in its Register of Births and that her date of birth is listed as "June 24, 1980." Under the guidelines in

establishing the victim's age, this certification qualifies as an authentic document. Moreover, Ogarte himself admitted, not only on cross examination, but also to his own counsel during his direct examination, that AAA is his eldest child and was 16 years old on November 1, 1996.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN A VICTIM'S TESTIMONY WILL NOT WEAKEN HER CREDIBILITY BECAUSE WE CANNOT EXPECT A RAPE VICTIM TO REMEMBER EVERY UGLY DETAIL OF HER APPALLING EXPERIENCE. — Ogarte insists that both the RTC and the Court of Appeals erred in giving full weight and credence to AAA's testimony considering that it was uncorroborated and was replete with inconsistencies. However, he only gave a general statement and failed to specifically identify the alleged inconsistencies in AAA's testimony. Nevertheless, this Court has declared that inconsistencies in a victim's testimony will not weaken her credibility because we cannot expect a rape victim to remember every ugly detail of her appalling experience. In *People v. Del Rosario*, we said: Etched in our jurisprudence is the doctrine that a victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lurid detail of a frightening experience — a verity born out of human nature and experience. This is especially true with a rape victim who is required to utilize every fiber of her body and mind to repel an attack from a stronger aggressor. x x x.

4. ID.; ID.; ID.; THE TRIAL COURT'S EVALUATION THEREOF IS ENTITLED TO THE HIGHEST RESPECT. — Again, this Court is compelled to repeat the well-entrenched rule that the trial court's evaluation of the credibility of the witnesses is entitled to the highest respect absent a showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case. This is because the trial court is deemed to be in a better position to decide the question of credibility, since it had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath. The RTC was "convinced, without reservation" in AAA's credibility especially since her testimony was "clear, straightforward, credible and truthful."

We also agree with the RTC's assessment that the ill motive Ogarte imputed on his daughter is baseless and concocted only to escape liability x x x.

5. ID.; ID.; ID.; DELAY IN REPORTING THE RAPE INCIDENT TO PROPER AUTHORITIES DOES NOT NEGATE THE VERACITY OF THE VICTIM'S CHARGES ESPECIALLY WHEN THERE IS THREAT TO HER LIFE. — AAA's delay in reporting the incident to the proper authorities is also insignificant and does not negate the veracity of her charges. It should be remembered that Ogarte threatened to kill her if she revealed the rapes to anyone. Moreover, her own mother told her to keep her silence when AAA told her about the rapes a month after their occurrence. This Court reiterates that: The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims."

6. ID.; ID.; ID.; LONE UNCORROBORATED TESTIMONY OF THE RAPE VICTIM IS ENOUGH TO CONVICT THE ACCUSED AS LONG AS HER TESTIMONY IS CLEAR, POSITIVE, AND PROBABLE. — Since there are usually only two witnesses in rape cases, it is also a settled rule that rape may be proven by the lone uncorroborated testimony of the offended victim, as long as her testimony is clear, positive, and probable. As we have established that AAA was a credible witness, her clear, positive, and probable, uncorroborated testimony is enough to convict Ogarte of the crime of rape. As the Court held in *People v. Tayaban*: [I]t is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

7. ID.; ID.; ALIBI; TO PROSPER, THE REQUIREMENTS OF TIME AND PLACE MUST BE STRICTLY COMPLIED

WITH. — The RTC and the Court of Appeals were correct in disregarding Ogarte's defenses. This Court has uniformly held, time and again, that both "denial and alibi are among the weakest, if not the weakest, defenses in criminal prosecution." It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. In *People v. Palomar*, we explained why alibi is a weak and unreliable defense: Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. It cannot prevail over the positive identification of the accused by eyewitnesses who had no improper motive to testify falsely. x x x. We have also declared that in case of alibi, the accused must show that he had strictly complied with the requirements of time and place: In the case of alibi, it is elementary case law that the requirements of time and place be strictly complied with by the defense, meaning that the accused must not only show that he was somewhere else but that it was also physically impossible for him to have been at the scene of the crime at the time it was committed. x x x. This Ogarte utterly failed to do.

8. ID.; ID.; ID.; POSITIVE IDENTIFICATION PREVAILS OVER DENIAL AND ALIBI. — Aside from his testimony, Ogarte never presented any other evidence to prove that he could not have committed the rapes. He did not present any other witness, let alone his wife, whom he claimed was with him on November 1, 1996 and whom AAA claimed to have ordered her to go with Ogarte to gather wood on November 3, 1996. This Court cannot over-emphasize the repeatedly quoted doctrine that positive identification prevails over denial and alibi.

9. CRIMINAL LAW; QUALIFIED RAPE; PROPER PENALTY. — The RTC was correct in imposing upon Ogarte the penalty of death as it found Ogarte guilty beyond reasonable doubt of two counts of **qualified rape**, AAA being Ogarte's 16-year-old daughter when the rapes were committed. However, although under the Death Penalty Law, the crime of qualified rape is punishable by death, Republic Act No. 9346, which took effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the proper penalty to be imposed upon Ogarte in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole.

10. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT; AWARD OF CIVIL INDEMNITY *EX DELICTO* AND MORAL DAMAGES TO THE RAPE VICTIM, WARRANTED. — Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape. Moral damages are automatically awarded without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Accused-appellant Edgardo Ogarte *y* Ocob (Ogarte) is now before Us on review after the Court of Appeals, in its Decision[1] dated November 20, 2007, in CA-G.R. CR.-H.C. No. 00100, affirmed with modification the March 9, 2000 Decision[2] of the Regional Trial Court (RTC), 9th Judicial Region, Branch 28, Liloy, Zamboanga del Norte, in Criminal Case Nos. L-0043 and L-0044, wherein Ogarte was found guilty beyond reasonable doubt of two counts of Rape, qualified by relationship and age, as defined and penalized under Article 335 of the Revised Penal Code and was sentenced to suffer the penalty of death and the payment of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, and Fifty Thousand Pesos (₱50,000.00) as moral damages, for each count of rape.

On May 2, 1997, two separate Informations were filed before the RTC, charging Ogarte with two separate counts of Rape. The accusatory portions of the respective Informations read:

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[1] *Rollo*, pp. 3-26; penned by Associate Mario V. Lopez with Associate Justices Romulo V. Borja and Elihu A. Ybañez, concurring.

[2] CA *rollo*, pp. 18-32; penned by Judge Mariano S. Macias.

Criminal Case No. L-0043:[3]

That, in the evening, on or about the 1st day of November, 1996, in the municipality of XXX, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one [AAA],[4] his 16[-]year[-]old daughter, against her will and without her consent.[5]

Criminal Case No. L-0044:[6]

That, in the morning, on or about the 3rd day of November, 1996, in the municipality of X X X, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one [AAA], his 16[-]year[-]old daughter, against her will and without her consent.[7]

On October 15, 1997, Ogarte was arraigned and he pleaded not guilty to the two charges.[8] Joint trial on the merits ensued after the termination of the pre-trial conference.[9]

The prosecution's first witness was the private complainant herself, AAA. She confirmed that it was she who had filed the two complaints for rape against her own father Ogarte, whom she identified in open court. According to AAA, the first instance of rape happened at around ten o'clock in the evening of

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[3] Formerly Criminal Case No. S-2867.

[4] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[5] Records, Vol. I, p. 12.

[6] Formerly Criminal Case No. S-2868.

[7] Records, Vol. II, p. 1.

[8] *Id.*, Vol. I, p. 28.

[9] *Id.* at 52.

November 1, 1996, in their home in X X X. AAA claimed that while she was sleeping beside her four younger sisters, Ogarte woke her up, held her hands, grabbed her head, and brought her to the kitchen wherein she was forced to lie down on the floor. AAA said that her struggles were no match for Ogarte's strength[10] who proceeded to take off her pants and underwear, climb on top of her, and insert his penis into her vagina. AAA averred that she cried in pain and pleaded with her father "not to do it"[11] but Ogarte told her "to be silent because he will do it slowly"[12] and "not to worry because nothing will happen to [her]."[13] AAA said that after Ogarte ejaculated — which she knew because of the white fluid she saw on his penis after he removed it from her vagina — he threatened to kill her if she told her mother, who was at that time in Guinabucan, Zamboanga del Sur,[14] or anybody else of what had happened. For fear that Ogarte is capable of carrying out his threats, AAA kept her silence even when her mother arrived the following day.[15]

At around nine o'clock in the morning of November 3, 1996, AAA alleged that she was again raped by Ogarte. This occurred when, upon her mother's order, she reluctantly obeyed to help Ogarte gather some firewood in the wooded area near their house. AAA narrated that upon carrying some of the wood pieces Ogarte had cut, Ogarte, still carrying the *bolo* he used to cut the wood, pulled her shoulders and told her not to make any noise as he missed her very much. AAA recounted how Ogarte then went on to remove her undergarments, and ignoring her cries, once again placed himself on top of her and with a "push and pull motion,"[16] consummated his sexual desires. After Ogarte was

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[10] TSN, March 17, 1998, p. 7.

[11] TSN, March 3, 1998, p. 6.

[12] *Id.*

[13] *Id.*

[14] TSN, March 17, 1998, p. 2.

[15] TSN, March 3, 1998, pp. 3-7.

[16] *Id.* at 9.

done, he again warned and threatened AAA against breaking her silence.[17]

AAA described how in the following days and weeks she was able to foil Ogarte's attempts, by avoiding him and by pinching and waking up her sleeping sisters whenever Ogarte tried to make advances. She had managed to keep the incidents to herself up until December 5, 1996, when her mother again asked her to help her father Ogarte gather some wood. AAA, believing that she would again be violated by Ogarte in the woods, mustered the courage to reveal to her mother the events that transpired on November 1 and 3, 1996. Upon learning about this, Ogarte, in his anger, pulled AAA and was about to stab her when he was stopped by AAA's mother who arrived just in time. Thereafter, AAA's mother told her to keep quiet about what her father did to her.[18]

On March 20, 1997,[19] AAA told her grandmother BBB her ordeal in the hands of her own father.[20] On April 2, 1997, AAA and BBB went to the National Bureau of Investigation (NBI) in Dipolog City where they executed the sworn affidavits[21] that were used as bases for the charges against Ogarte.[22]

BBB, AAA's grandmother, was presented next. BBB identified Ogarte in open court and said she knew Ogarte because he is her son-in-law, being the husband of her daughter, AAA's mother. BBB confirmed that AAA was her granddaughter, that she was only 16 years old when the rapes happened, and that AAA told her about the rapes on March 20, 1997, when AAA went to see her in Zamboanga del Sur.[23]

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[17] *Id.* at 7-9.

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

[19] Records, Vol. II, p. 13.

[20] TSN, March 3, 1998, p. 11.

[21] Records, Vol. II, pp. 9-13.

[22] TSN, March 3, 1998, p. 11.

[23] TSN, June 16, 1998, pp. 2-6.

Before resting their case, the prosecution also submitted the following Medico-Legal Findings made on April 2, 1997 by Dr. Milagros M. Cavan, whose testimony was deemed no longer necessary by the RTC, in view of the fact that the medical certificate she submitted was admitted by the defense, subject to rebuttal.[24]

DIAGNOSIS/FINDINGS:

– Examined conscious, coherent, ambulatory:

Weight: 49.6 kgs. Height: 162 C.M.
Pertinent PE Findings:
Breast: Conical in shape; areola pinkish
Chest and Lungs: Clear breath sounds
CVS – Regular rate and rhythm
Abdomen – Flat, soft, no masses, no normoactive bowel sounds
Genitalia:
Introitus: Admits two examining fingers with ease.
Hymen – With old healed lacerations, at 5 0'clock and 7 0'clock positions[25]

Ogarte, addressing the first charge against him, vehemently denied that he had raped his own daughter on the night of November 1, 1996. He said that although it was true that he was at their residence that evening, his wife, AAA's mother, was also there that night, contrary to AAA's allegations. Ogarte described the layout of their house and argued that because AAA slept at the other end of the room, beside the wall, thus, at the farthest side to the kitchen where the rape allegedly took place, it would have been impossible to pull her and bring her to the kitchen without stepping on or awakening his other children who were sleeping right beside AAA.[26]

Ogarte likewise claimed innocence on the second charge of rape and averred that he was not in the wooded area with AAA on November 3, 1996 as he was plowing his farm that day.

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[24] Records, Vol. I, p. 79.

[25] *Id.*, Vol. II, p. 15.

[26] TSN, April 22, 1999, pp. 2-5.

Ogarte contended that AAA filed these charges against him as an act of revenge because he and his wife slapped her sometime in February 1997[27] when she adamantly denied having sexual intercourse with three men at her school, as reported by Ogarte's cousin who worked as a teacher in AAA's school.[28]

Ogarte, invoking his love for AAA, his eldest child,[29] whom he admitted to being 16 years old at the time the alleged incidents happened,[30] asserted that for the very reason that AAA is his child, he could not commit these crimes as charged.[31]

Ogarte's close friend Modesto Capalac, who was also their *Barangay* Captain at that time, attested to Ogarte's well-being and good moral character. He said that he knew Ogarte because they have been neighbors for a long time, even before they became neighbors in San Roque. He said that Ogarte had no criminal record in their *Barangay* and that since Ogarte was a cooperative man, nobody had ever filed a complaint against him.[32]

On March 9, 2000, the RTC found Ogarte guilty as charged in both criminal cases and imposed on him the supreme penalty of death for each count of rape:

> WHEREFORE, finding the accused Edgaro Ogarte *y* Ocob guilty beyond reasonable doubt of two counts of the crime of Rape as defined and penalized under Art. 335 of the Revised Penal Code, as charged, aggravated by relationship and age, in relation to Art. 47 of the same Code, this Court hereby sentences him to suffer the penalty of DEATH for each count and orders him to pay the private offended party the sums of ₱75,000.00 as indemnity for each count and ₱50,000.00 as moral damages for each count, or a total of ₱250,000.00.[33]

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

[28] *Id.* at 5-8.

[29] *Id.* at 12.

[30] *Id.* at 5, 12.

[31] *Id.* at 8.

[32] TSN, September 22, 1999, pp. 2-3.

[33] CA *rollo*, p. 32.

The RTC said that the constitutional presumption of innocence that Ogarte originally enjoyed was sufficiently overcome by AAA's clear, straightforward, credible, and truthful declaration that on two separate occasions, he succeeded in having sexual intercourse with her, without her consent and against her will, in violation of Article 335 of the Revised Penal Code. The RTC also debunked Ogarte's imputation of ill motive on AAA, stating that while the supposed "whipping and slapping" happened only in February 1997, AAA had exposed Ogarte's appalling acts as early as December 5, 1996. Citing *People v. Victor*,[34] the RTC held that denial and alibi are inherently weak defenses that cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime.[35] Moreover, Ogarte, in interposing the defense of denial and alibi, "failed to demonstrate and show that 'he was somewhere else at the time of the commission of the crime and that is why it is physically impossible for him to have been at the scene of the crime at the time of its commission and commit the crime.'"[36] The RTC also held that AAA's delay in filing a case against Ogarte is not uncommon and is justified in light of the threats made against her life if she told anyone about the rapes, on top of the fact that her own mother told her to keep quiet about it.[37]

On intermediate appellate review,[38] the Court of Appeals "synthesized for coherence"[39] the errors assigned by Ogarte as follows: "(1) credibility of the victim-witness, (2) appellant's

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[34] 354 Phil. 195 (1998).

[35] *Id.* at 207.

[36] CA *rollo*, pp. 28-29.

[37] *Id.* at 24-30.

[38] This case, docketed as G.R. Nos. 143000-01, has reached this Court by way of automatic review on August 25, 2000. However, conformably with the decision promulgated on July 7, 2004 in G.R. Nos. 147678-87, entitled *People v. Mateo*, which allowed for intermediate review by the Court of Appeals, this Court resolved to transfer this case to the Court of Appeals for appropriate action and disposition. (CA records, p. 192.)

[39] *Rollo*, p. 12.

defense of denial, and (3) aggravating circumstance of minority."[40] Ogarte argued AAA's testimony was replete with inconsistencies, her minority was never duly established, and his credible alibi should have been believed in view of the weakness of the prosecution's evidence.[41]

The Court of Appeals gave full weight to the RTC's determination that AAA's testimony was "credible, worthy of full faith and credit," since there was nothing in the records, which showed that the RTC misappreciated the facts or was arbitrary in giving probative value on AAA's testimony. The Court of Appeals also held that the "allegation of inconsistency does not detract AAA's credibility"[42] as sworn statements, not being conclusive proofs, cannot prevail over AAA's testimonies given in open court. On the issue of delay in filing this case, the Court of Appeals said it was justified "considering the intimidation, threat, and force employed"[43] by Ogarte against AAA. The Court of Appeals also agreed with the RTC that Ogarte's defense of denial, being an inherently weak and unreliable defense, could not prevail over AAA's positive and categorical statements. The Court of Appeals affirmed the RTC's appreciation of the aggravating circumstances of minority and relationship, as they were alleged in the information and duly proven during the trial.[44]

On November 20, 2007, the Court of Appeals rendered its decision, modifying the RTC's decision in so far as the current law and jurisprudence are concerned, to wit:

WHEREFORE, the assailed Decision is **AFFIRMED** with **MODIFICATION**. Appellant is found guilty, beyond reasonable doubt, of the crime of rape in Crim. Case No. L-0043 and Crim. Case No. L-0044 and shall suffer the penalty of *reclusion perpetua*

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[40] *Id.*

[41] *Id.* at 8.

[42] *Id.* at 20.

[43] *Id.* at 21.

[44] *Id.* at 12-23.

for each count of rape. Appellant shall indemnify AAA in the amount of ₱75,000.00 as civil indemnity *ex delicto*, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages, also for each count of rape.[45]

Ogarte is now before this Court with the same assignment of errors he posed before the Court of Appeals, *viz*:

I

THE COURT *A QUO* ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED-APPELLANT DESPITE THE FACT THAT THE MINORITY OF THE PRIVATE COMPLAINANT WAS NEVER DULY ESTABLISHED IN ACCORDANCE WITH THE RULING IN *PEOPLE VS. MANUEL LIBAN*, G.R. NOS. 136247 & 138330, NOVEMBER 22, 2000.

II

THE COURT *A QUO* ERRED IN ACCORDING WEIGHT AND CREDENCE TO THE UNCORROBORATED TESTIMONY OF THE PRIVATE COMPLAINANT DESPITE THE FACT THAT IT IS REPLETE WITH MATERIAL INCONSISTENCIES AND THERE WAS CONSIDERABLE DELAY BEFORE SHE INSTITUTED THE INSTANT CASE, WHICH SHE ONLY DID SO ON ACCOUNT OF ILL-MOTIVE ON HER PART.

III

THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE AND NOT FINDING CREDIBLE THE ALIBI INTERPOSED BY THE DEFENSE IN VIEW OF THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.[46]

In reviewing rape cases, this Court is guided by three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should

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[45] *Id.* at 25.

[46] CA *rollo*, pp. 54-55.

be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[47]

Rape is a serious transgression with severe consequences for both the accused and the complainant. Using the above guiding principles in the review of rape cases, this Court is thus obligated to conduct a comprehensive and extensive assessment of a judgment of conviction for rape.[48]

This Court has thoroughly scrutinized the entire records of the case, and has found no reason to reverse the courts below.

Ogarte was charged in the information under Article 335 of the Revised Penal Code. The pertinent portions of this Article are emphasized as follows:

Art. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. **By using force or intimidation;**
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua.*

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

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[47] *People v. Antivola,* 466 Phil. 394, 408 (2004).

[48] *People v. Celocelo,* G.R. No. 173798, December 15, 2010.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.**
2. When the victim is under the custody of the police or military authorities.
3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
4. When the victim is a religious or a child below seven (7) years old.
5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.[49] (Emphases supplied.)

Ogarte was convicted of two counts of rape by using force and intimidation, qualified by the concurrent circumstances of AAA's minority and Ogarte's relationship with AAA. In an effort to escape the penalty of death, as imposed by Article 335 of the Revised Penal Code when the crime of simple rape is qualified, Ogarte claims that the courts below erred in appreciating AAA's minority as a qualifying circumstance, because it was never duly proven by the prosecution.

We disagree.

While we are aware of the divergent rulings on the proof required to establish the age of the victim in rape cases, this

[49] As amended by Sec. 11, Republic Act No. 7659.

has already been addressed by this Court in *People v. Pruna*,[50] wherein we established certain guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance. We have reiterated these guidelines in the more recent case of *People v. Flores*,[51] as follows:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

    a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

    b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

    c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

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[50] *People v. Pruna*, 439 Phil. 440, 470-471 (2002).

[51] G.R. No. 177355, December 15, 2010.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.[52]

The qualifying circumstances of age and relationship were not only properly alleged in the information but were also duly established by the prosecution during the trial of the cases against Ogarte. Records show that AAA submitted a certification from the Office of the Local Civil Registrar of Labason, Zamboanga del Norte that her birth records appear in its Register of Births and that her date of birth is listed as "June 24, 1980."[53] Under the above guidelines in establishing the victim's age, this certification qualifies as an authentic document. Moreover, Ogarte himself admitted, not only on cross examination, but also to his own counsel during his direct examination, that AAA is his eldest child and was 16 years old on November 1, 1996:

On direct examination:

Q: How old was [AAA] on November 1, 1996?

A: Sixteen.

x x x x x x x x x

Q: [AAA] according to you was sixteen years old at that time?

A: Yes, sir.

Q: Was she the eldest child sleeping with you on November 1, 1996?

A: Yes, sir.

Q: So the other five children of yours were younger than [AAA]?

A: Yes, sir.[54]

And again on cross-examination:

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[52] *Id.*

[53] Records, Vol. II, p. 14.

[54] TSN, April 22, 1999, p. 5.

Q: What was the age of your daughter?

A: [AAA] is sixteen.

x x x x x x x x x

Q: How many children do you have?

A: Eight.

Q: How young is your eldest?

A: Sixteen.

Q: Who is your eldest?

A: [AAA].[55]

Ogarte insists that both the RTC and the Court of Appeals erred in giving full weight and credence to AAA's testimony considering that it was uncorroborated and was replete with inconsistencies. However, he only gave a general statement and failed to specifically identify the alleged inconsistencies in AAA's testimony. Nevertheless, this Court has declared that inconsistencies in a victim's testimony will not weaken her credibility because we cannot expect a rape victim to remember every ugly detail of her appalling experience.[56] In *People v. Del Rosario*,[57] we said:

> Etched in our jurisprudence is the doctrine that a victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lurid detail of a frightening experience - a verity born out of human nature and experience. This is especially true with a rape victim who is required to utilize every fiber of her body and mind to repel an attack from a stronger aggressor. x x x.[58]

Again, this Court is compelled to repeat the well-entrenched rule that the trial court's evaluation of the credibility of the witnesses is entitled to the highest respect absent a showing

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[55] *Id.* at 12.

[56] *People v. Ruiz*, 368 Phil. 805, 827 (1999).

[57] 398 Phil. 292 (2000).

[58] *Id.* at 301.

that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case.[59] This is because the trial court is deemed to be in a better position to decide the question of credibility, since it had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath.[60]

The RTC was "convinced, without reservation"[61] in AAA's credibility especially since her testimony was "clear, straightforward, credible and truthful."[62] We also agree with the RTC's assessment that the ill motive Ogarte imputed on his daughter is baseless and concocted only to escape liability, to wit:

> Although this Court noted that the accused, in an attempt to exculpate himself from any liability brought about by the couple of charges leveled against him, imputed ill-motive on the part of the private complainant in indicting him of the crimes as charged, **the same deserves scant consideration** in view of the fact that the **accused had whipped or slapped the herein private complainant only sometime in February 1997 as testified to by the accused** (p-10, TSN, April 22, 1999) **which incident was considered by the defense as the source of the ill-motive of the prosecution witness [AAA], while the private complainant had reported the rapes to her mother on December 5 yet** (p-10, TSN, March 3, 1998).[63] (Emphasis ours.)

AAA's delay in reporting the incident to the proper authorities is also insignificant and does not negate the veracity of her charges.[64] It should be remembered that Ogarte threatened to kill her if she revealed the rapes to anyone. Moreover, her own mother told her to keep her silence when AAA told her about

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[59] *People v. Ibay*, 371 Phil. 81 (1999).

[60] *People v. Fernandez*, 426 Phil. 169, 173 (2002).

[61] CA *rollo*, p. 26.

[62] *Id.* at 24.

[63] *Id.* at 27.

[64] *People v. Julian*, 337 Phil. 411, 425 (1997).

the rapes a month after their occurrence. This Court reiterates that:

> The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims."[65]

Since there are usually only two witnesses in rape cases, it is also a settled rule that rape may be proven by the lone uncorroborated testimony of the offended victim, as long as her testimony is clear, positive, and probable.[66]

As we have established that AAA was a credible witness, her clear, positive, and probable, uncorroborated testimony is enough to convict Ogarte of the crime of rape. As the Court held in *People v. Tayaban:*[67]

> [I]t is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[68]

Ogarte is trying to persuade this Court to believe that he could not have committed the crimes on the bases of his denial and alibi.

The RTC and the Court of Appeals were correct in disregarding Ogarte's defenses. This Court has uniformly held, time and again, that both "denial and alibi are among the weakest, if not the

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[65] *People v. Gecomo*, 324 Phil. 297, 314-315 (1996).

[66] *People v. Buenviaje*, 408 Phil. 342, 354 (2001).

[67] 357 Phil. 494 (1998).

[68] *Id.* at 508.

weakest, defenses in criminal prosecution."[69] It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.[70]

In *People v. Palomar*,[71] we explained why alibi is a weak and unreliable defense:

> Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. It cannot prevail over the positive identification of the accused by eyewitnesses who had no improper motive to testify falsely. x x x.[72]

We have also declared that in case of alibi, the accused must show that he had strictly complied with the requirements of time and place:

> In the case of alibi, it is elementary case law that the requirements of time and place be strictly complied with by the defense, meaning that the accused must not only show that he was somewhere else but that it was also physically impossible for him to have been at the scene of the crime at the time it was committed. x x x.[73]

This Ogarte utterly failed to do. While he merely denied the rape on November 1, 1996, his alibi for the November 3, 1996 rape failed to show that it was impossible for him to have committed the crime. Ogarte testified that he was at his farm, plowing the field instead of at the wooded area with AAA on November 3, 1996. He further stated that his farm was just a kilometer away from their house and would not even take half an hour to traverse.[74] Clearly, the proximity of the farm to the wooded area and to their house refutes the defense of alibi.[75]

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[69] *People v. Espinosa*, 476 Phil. 42, 62 (2004).

[70] *Id.* at 62.

[71] 343 Phil. 628 (1997).

[72] *Id.* at 663-664.

[73] *People v. Pili*, 351 Phil. 1046, 1068-1069 (1998).

[74] TSN, April 22, 1999, p. 9.

[75] *People v. Pili*, *supra* note 73.

Aside from his testimony, Ogarte never presented any other evidence to prove that he could not have committed the rapes. He did not present any other witness, let alone his wife, whom he claimed was with him on November 1, 1996 and whom AAA claimed to have ordered her to go with Ogarte to gather wood on November 3, 1996. This Court cannot over-emphasize the repeatedly quoted doctrine that positive identification prevails over denial and alibi. [76]

The RTC was correct in imposing upon Ogarte the penalty of death as it found Ogarte guilty beyond reasonable doubt of two counts of **qualified rape**, AAA being Ogarte's 16-year-old daughter when the rapes were committed. However, although under the Death Penalty Law,[77] the crime of qualified rape is punishable by death, Republic Act No. 9346,[78] which took effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the proper penalty to be imposed upon Ogarte in lieu of the death penalty is *reclusion perpetua*,[79] without eligibility for parole.[80]

Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape. Moral damages are automatically awarded without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[81]

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00100, is hereby *AFFIRMED with MODIFICATION*. Accused-appellant Edgardo Ogarte *y* Ocob is found *GUILTY* beyond reasonable doubt of the crime of *QUALIFIED RAPE* in Criminal Case No. L-0043 and Criminal Case No. L-0044 and sentenced to *reclusion perpetua*,

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[76] *People v. Espinosa*, *supra* note 69.

[77] Republic Act No. 7659.

[78] An Act Prohibiting the Imposition of the Death Penalty, June 24, 2006.

[79] Republic Act No. 9346, Section 2.

[80] *Id.*, Section 3.

[81] *People v. Flores*, *supra* note 51.

in lieu of death, without eligibility for parole, for each count of rape. He is ordered to pay the victim AAA Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, for each count of rape, ALL with interest at the rate of 6% per annum from the date of finality of this judgment. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182758. May 30, 2011]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF SEVERINO LISTANA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; FILING OF INJUCTION BOND IS A REQUISITE; PURPOSE OF THE INJUNCTION BOND. — An applicant for preliminary injunction is required to file a bond executed to the party or person enjoined, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction. Section 4(b), Rule 58 of the Rules of Court states: SEC. 4. *Verified application and bond for preliminary injunction or temporary restraining order*. — A preliminary injunction or temporary restraining order may be granted only when: x x x (b) Unless exempted

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[*] Per Special Order No. 994 dated May 27, 2011.

by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued. As correctly ruled by the lower courts, the ₱5,644,773.02 bond shall answer for the damages Listana may sustain if the courts finally uphold the ₱10,956,963.25 just compensation set by the DARAB. In *Republic v. Caguioa*, the Court held that, "The purpose of the injunction bond is to protect the defendant against loss or damage by reason of the injunction in case the court finally decides that the plaintiff was not entitled to it, and the bond is usually conditioned accordingly."

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657); ORIGINAL AND EXCLUSIVE JURISDICTION OVER EMINENT DOMAIN CASES AND PROSECUTION OF CRIMINAL OFFENSES UNDER R.A. NO. 6657 IS VESTED WITH THE SPECIAL AGRARIAN COURTS, AND MAY NOT BE USURPED BY ADMINISTRATIVE AGENCIES. — The SAC has original and exclusive jurisdiction over petitions for determination of the amount of just compensation of properties acquired under RA No. 6657. Administrative agencies have no jurisdiction over just compensation cases. Section 57 of RA No. 6657 states that, "The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." In *Land Bank of the Philippines v. Wycoco*, citing *Republic v. Court of Appeals*, the Court held that: In *Republic v. Court of Appeals*, it was held that **Special Agrarian Courts are given original and exclusive jurisdiction over** two categories of cases, to wit: (1) **all petitions for the determination of just compensation**; and (2) the prosecution of all criminal offenses under R.A. No. 6657. x x x **The DAR, as an administrative agency, cannot be granted jurisdiction over cases of eminent domain and over criminal cases. The valuation of property in eminent domain is essentially a judicial function which is vested with the Special Agrarian Courts and cannot be lodged with administrative agencies**.

3. ID.; ID.; ID.; DECISION OF THE DARAB SETTING THE AMOUNT OF JUST COMPENSATION IS MERELY PRELIMINARY AND NOT EXECUTORY IF CHALLENGED BEFORE THE SPECIAL AGRARIAN COURT; THE SPECIAL AGRARIAN COURT MAY GRANT EXECUTION PENDING APPEAL OF THE DARAB DECISION ON MERITORIOUS GROUNDS. — [A]s a rule, the DARAB's decision setting the amount of just compensation is merely preliminary and not executory if challenged before the SAC. Execution pending "appeal" of the DARAB decision is allowed only on meritorious grounds. Even then, it is the SAC, not the DARAB, that can grant execution pending "appeal" because the SAC has original and exclusive jurisdiction over just compensation cases. The determination of the amount of just compensation is a judicial function that cannot be usurped by administrative agencies. In *Apo Fruits Corporation v. Court of Appeals*, the Court held that: It is now settled that the valuation of property in eminent domain is essentially a judicial function which is vested with the RTC acting as Special Agrarian Court. The same cannot be lodged with administrative agencies and may not be usurped by any other branch or official of the government.

4. ID.; ID.; ID.; ID.; A WRIT OF EXECUTION AND A WARRANT OF ARREST ISSUED TO EXECUTE A DECISION WHICH IS MERELY PRELIMINARY AND NOT EXECUTORY IS CONSIDERED INVALID. — In the present case, LBP filed with the SAC a petition for determination of the amount of just compensation on 6 September 1999. The PARAD issued the *alias* writ of execution and warrant of arrest on 27 November 2000 and 3 January 2001, respectively. The writ of execution and warrant of arrest were invalid because the 14 October 1998 Decision of the DARAB setting the amount at ₱10,956,963.25 was merely preliminary and not executory.

5. REMEDIAL LAW; JUDGMENTS; DECISION WHICH HAS LONG BECOME FINAL AND EXECUTORY CAN NO LONGER BE DISTURBED; WITHDRAWAL OF THE CASH BOND, NOT ALLOWED. — In any event, the Court has reinstated the 29 January 2001 Order of the RTC enjoining the PARAD from implementing the warrant of arrest pending final determination of the amount of just compensation for the property. *Land Bank of the Philippines v. Listana, Sr.* has

long become final and executory and can no longer be disturbed. Consequently, LBP cannot withdraw the ₱5,644,773.02 cash bond which is a condition for the issuance of the writ of preliminary injunction.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Reynaldo Herrera for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 30 January 2008 Decision[2] and 6 May 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 92701. The Court of Appeals affirmed *in toto* the 4 August[4] and 18 October[5] 2005 Orders of the Regional Trial Court, Judicial Region 5, Branch 51, Sorsogon City (RTC), in Civil Case No. 2001-6803.

The Facts

Severino Listana (Listana) owned a 246.0561-hectare parcel of land in Inlagadian, Casiguran, Sorsogon, covered by Transfer Certificate of Title No. T-20193. Listana voluntarily sold the property to the government, through the Department of Agrarian Reform, under Republic Act (RA) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988.

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[1] *Rollo*, pp. 28-54.

[2] *Id.* at 9-22. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca De Guia Salvador and Magdangal M. De Leon concurring.

[3] *Id.* at 7.

[4] CA *rollo*, pp. 25-29. Penned by Judge Jose L. Madrid.

[5] *Id.* at 30.

The Department of Agrarian Reform Adjudication Board (DARAB) of Sorsogon commenced summary administrative proceedings to determine the amount of just compensation for the property. In its 14 October 1998 Decision, the DARAB set the amount at ₱10,956,963.25 and ordered petitioner Land Bank of the Philippines (LBP) to pay Listana the same.

On 18 June 1999, the Provincial Agrarian Reform Adjudicator (PARAD) issued a writ of execution ordering Land Bank Manager and Agrarian Operations Center Head Alex A. Lorayes (Lorayes) to pay Listana ₱10,956,963.25. Lorayes refused. Thus, on 2 September 1999, Listana filed with the PARAD a motion for contempt against Lorayes.

On 6 September 1999, LBP filed with the Regional Trial Court, Judicial Region 5, Branch 52, Sorsogon City, acting as special agrarian court (SAC), a petition for judicial determination of the amount of just compensation for the property. LBP challenged the amount set by the DARAB and prayed that the amount be fixed at ₱5,871,689.03.

The PARAD granted Listana's motion for contempt. In its 20 August 2000 Order, the PARAD cited Lorayes for indirect contempt and ordered his imprisonment until he complied with the DARAB's 14 October 1998 Decision.

In its 25 October 2000 Order, the SAC dismissed LBP's petition for judicial determination of the amount of just compensation for the property. LBP appealed the 25 October 2000 Order.

In its 27 November 2000 Resolution, the PARAD ordered the issuance of an *alias* writ of execution, ordering LBP to pay Listana ₱10,956,963.25. On 3 January 2001, the PARAD issued a warrant of arrest against Lorayes.

LBP filed with the RTC a petition for injunction with application for the issuance of a writ of preliminary injunction enjoining PARAD from implementing the warrant of arrest against Lorayes. In its 29 January 2001 Order, the RTC enjoined the PARAD from implementing the warrant of arrest pending final determination of the amount of just compensation for the property.

LBP posted a ₱5,644,773.02 cash bond. The dispositive portion of the 29 January 2001 Order stated:

> WHEREFORE, premises considered, the respondent Provincial Adjudicator of the DARAB or anyone acting in its stead is enjoined as it is hereby enjoined from enforcing its order of arrest against Mr. Alex A. Lorayes pending the final termination of the case before RTC Branch 52, Sorsogon upon the posting of a cash bond by the Land Bank.
>
> SO ORDERED.[6]

Listana filed with the RTC a motion for reconsideration. In its 2 April 2001 Order, the RTC denied the motion. Listana filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court. In its 11 December 2001 Decision, the Court of Appeals set aside the 29 January and 2 April 2001 Orders of the RTC.

LBP filed with the Court a petition for review on *certiorari* under Rule 45 of the Rules of Court. In *Land Bank of the Philippines v. Listana, Sr.*,[7] the Court set aside the 11 December 2001 Decision of the Court of Appeals and reinstated the 29 January and 2 April 2001 Orders of the RTC enjoining the PARAD from implementing the warrant of arrest pending final determination of the amount of just compensation for the property.

The Court declared void all proceedings that stemmed from Listana's motion for contempt. The Court held that:

> Hence, the contempt proceedings initiated through an unverified "Motion for Contempt" filed by the respondent with the PARAD were invalid for the following reasons: ***First***, the Rules of Court clearly require the filing of a verified petition with the Regional Trial Court, which was not complied with in this case. The charge was not initiated by the PARAD *motu proprio*, rather, it was by a motion filed by respondent. ***Second***, neither the PARAD nor the DARAB have jurisdiction to decide the contempt charge filed by the respondent. The issuance of a warrant of arrest was beyond the

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[6] *Rollo*, p. 12.

[7] 455 Phil. 750 (2003).

power of the PARAD and the DARAB. Consequently, all the proceedings that stemmed from respondent's "Motion for Contempt," specifically the Orders of the PARAD dated August 20, 2000 and January 3, 2001 for the arrest of Alex A. Lorayes, are null and void.

WHEREFORE, in view of the foregoing, the petition for review is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 65276, dated December 11, 2001, is *REVERSED* and *SET ASIDE*. The Order of the Regional Trial Court of Sorsogon, Sorsogon, Branch 51, dated January 29, 2001, which enjoined the Provincial Adjudicator of the DARAB or anyone acting in its stead from enforcing its order of arrest against Mr. Alex A. Lorayes pending the final termination of the case before Regional Trial Court of Sorsogon, Sorsogon, Branch 52, is *REINSTATED*.

SO ORDERED.[8]

On 26 May 2004, LBP filed with the RTC a motion[9] to withdraw the ₱5,644,773.02 cash bond. LBP stated that:

LAND BANK OF THE PHILIPPINES, through counsel unto this Honorable Court, respectfully avers:

1. That last February 1, 2001, LANDBANK posted cash bond covered by Official Receipt No. 7135588 dated January 31, 2001 in the amount of ₱5,644,773.02. [C]opy of the Order, Official Receipt and deposit slip are hereto attached as Annexes "A", "B", and "C";

2. That on August 5, 2003, the Supreme Court issued a Decision in G.R[.] No. 152611 entitled "*Land Bank of the Philippines versus Severino Listana*," the dispositive portion is quoted as follows:

> "WHEREFORE, in view of the foregoing, the petition for review is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 65276, dated December 11, 2001, is REVISED [sic] and SET ASIDE. The Order of the Regional Trial Court of Sorsogon, Sorsogon, Branch 51, dated January 29, 2001, which enjoined the Provincial Adjudicator of the DARAB or anyone acting in its stead from enforcing its order

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[8] *Id.* at 760-761.

[9] CA *rollo*, pp. 31-34.

or [sic] arrest against Mr. Alex A. Lorayes pending the final termination of the case before Regional Trial Court of Sorsogon, Sorsogon, Branch 52, is REINSTATED.

SO ORDERED."

1. That on February 26, 200 [sic], an Entry of Judgment was issued by the Supreme Court making the Decision in G.R. No. 152611 final and executory. Copy of the Entry of Judgment is hereto attached as Annex "D".

WHEREFORE, premises considered it is most respectfully prayed that the cash bond put up by Land Bank of the Philippines be released[.][10]

The RTC's Ruling

In its 4 August 2005 Order, the RTC denied LBP's motion to withdraw the ₱5,644,773.02 cash bond. The RTC held that:

The Court finds the Land Bank's Motion without merit inasmuch as the arguments raised therein are specious. Contrary to Land Bank's conclusion, this Court holds otherwise that the cash bond did not become moot and academic upon the finality of the Supreme Court's decision dated August 5, 2003. This is so because the underlying reason for the posting of the cash bond still remains despite the decision of the Supreme Court upholding the unconstitutionality of the order of arrest issued by PARAD. And that reason is the distinctive fact that the cash bond was put up in order to secure any damages that the private respondent Listana may incur by reason of the issuance of the injunction order. The damages being referred to, that is — the legal right of Mr. Listana to be justly and promptly paid of his expropriated property — was not effectively extinguished by the mere decision of the Supreme Court declaring the illegality of the order of arrest issued by the PARAD against Mr. Alex Lorayes. In fact, the Court's ruling did not in any way, expressly or impliedly, ordered [sic] the release of the cash bond in Land Bank's favor despite that the latter's petition was upheld with finality by the Supreme Court.

Indeed, the cash bond did not become moot and academic as clearly intentioned in the Supreme Court's decision dated August

[10] *Id.* at 31.

5, 2003. A simple reading of its dispositive portion would crystallize to anyone's mind that the final resolution of the case, including all the issues interwoven therein, is conditioned on the final determination of the just compenstaion case filed before Branch 52, RTC-Sorsogon and now pending before the Supreme Court. It clearly means therefore that the release of the cash bond to either party being one of the issues necessarily included in this case, would depend on the final termination of the main action — the just compensation case. To this date, the Supreme Court has not rendered a resolution pertaining thereto.

In adopting this line of reasoning, this Court is merely upholding with consistency the tenor and intent of its Order dated January 29, 2001. In issuing the injunction order against the PARAD, the Court did not only recognize the right of Mr. Alex Lorayes against illegal arrest but at the same time protected the inherent right of Mr. Severino Listana to be justly and promptly paid of his expropriated property, hence it ordered the petitioner to post a cash bond in the amount of ₱5,644,773.02, the almost exact amount Mr. Listana could have collected as payment from Land Bank had it not for the injunction order. At this juncture also, the Court would not be persuaded with Land Bank's contention that the cash bond be released it [sic] its favor for the reason that the same was drawn not from the agrarian fund but advanced from its capital fund as part of litigation expenses. The internal operations of Land Bank is of no moment under the instant case. When the injunctive order was issued; it was clear to Land Bank that the cash bond posted was precisely meant to secure the unpaid balance due to Mr. Listana. To adhere to Land Bank's contention would effectively defeat the purpose of the injunction bond and to subject again the landowner to another circuitous mode of collecting compensation for his property in case the just compensation case be resolved in his favor. Therefore, in the interest of social justice, the Court deems it wise to preserve the status quo with regards [sic] to the cash bond. It shall not be dissolved at the moment and shall stay pending the final termination of the just compensation case.[11]

LBP filed a motion for reconsideration. In its 18 October 2005 Order, the RTC denied the motion. LBP filed with the

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

Court of Appeals a petition[12] for *certiorari* under Rule 65 of the Rules of Court.

The Court of Appeals' Ruling

In its 30 January 2008 Decision, the Court of Appeals dismissed LBP's petition and affirmed *in toto* the RTC's 4 August and 18 October 2005 Orders. The Court of Appeals held that:

> It is plain to see from the Supreme Court's decision that only the *Orders* of the PARAD dated 20 August 2000 and 3 January 2001 for the arrest of Lorayes were nullified.
>
> A reading of the Supreme Court's decision will show that the nullification of the orders of the PARAD stemmed not from the correctness of Lorayes' refusal to execute the DARAB's decision nor from the entitlement of Land Bank to enjoin such execution. Rather, it is grounded on the adoption of the improper mode of initiating the contempt proceedings, and on PARAD's lack of jurisdiction to decide the contempt charge. Hence, the absence of any pronouncement in the Supreme Court's decision finally deciding the issue of whether or not Land Bank is permanently entitled to enjoin the payment of ₱10,956,963.25 to the Heirs of Listana. In fact, the dispositive portion unequivocally upholds and reinstates only the court *a quo*'s grant of the writ of *preliminary* injunction.
>
> It must be stressed that it is the dispositive part of the judgment that actually settles and declares the rights and obligations of the parties, finally, definitively, and authoritatively, notwithstanding the existence of statements in the body that may tend to confuse.
>
> Thus, notwithstanding its pronouncement that neither the PARAD nor the DARAB had any authority to cite Lorayes in contempt and order his arrest, the Supreme Court's decision cannot be used as basis to release the injunction bond posted by Land Bank, inasmuch as the decision upheld and reinstated the court *a quo*'s issuance of the writ of preliminary injunction. Without the injunction bond, the writ of preliminary injunction would be invalid.
>
> A preliminary injunction or temporary restraining order may be granted only when, among others, the applicant, unless exempted by the court, files with the court where the action or proceeding is

[12] *Id.* at 2-23.

pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto.

x x x x x x x x x

In the case at bar, the writ of preliminary injunction is directed at the PARAD's orders to arrest Lorayes for refusing to comply with the DARAB's decision ordering Land Bank to pay the amount of ₱10,956,963.25 as just compensation for the subject property.

As subsequently explained by the court a quo in its assailed Order, the underlying reason behind its grant of the writ of preliminary injunction is the pendency of Land Bank's action for judicial determination of just compensation. As long as the issue of just compensation is not settled, it would be precipitate to rule one way or the other on the propriety of executing the DARAB's decision.

Indeed, if the courts eventually uphold the DARAB's valuation of the subject property, the injunction against the execution of the DARAB's *Decision* would give rise to the Heirs' right to collect damages, which the injunction bond would answer for. It is only when the courts finally strike down the DARAB's computation of just compensation that the injunction bond may finally be released.

Clearly, the court *a quo* soundly exercised its discretion in refusing to release the injunction bond posted by Land Bank.[13]

LBP filed a motion for reconsideration. In its 6 May 2008 Resolution, the Court of Appeals denied the motion. Hence, the present petition.

Issue

LBP raises as issue that the Court of Appeals erred in not allowing the withdrawal of the ₱5,644,773.02 cash bond.

The Court's Ruling

The petition is unmeritorious.

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[13] *Rollo*, pp. 17-20.

In *Land Bank of the Philippines v. Listana, Sr.*, the Court reinstated the 29 January 2001 Order of the RTC. The dispositive portion of the case states:

> WHEREFORE, in view of the foregoing, the petition for review is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 65276, dated December 11, 2001, is *REVERSED* and *SET ASIDE*. **The Order of the Regional Trial Court of Sorsogon, Sorsogon, Branch 51, dated January 29, 2001, which enjoined the Provincial Adjudicator of the DARAB or anyone acting in its stead from enforcing its order of arrest against Mr. Alex A. Lorayes pending the final termination of the case before Regional Trial Court of Sorsogon, Sorsogon, Branch 52, is *REINSTATED***.
>
> SO ORDERED.[14] (Emphasis supplied)

The dispositive portion of the 29 January 2001 Order of the RTC states:

> WHEREFORE, premises considered, the respondent Provincial Adjudicator of the DARAB or anyone acting in its stead is enjoined as it is hereby enjoined from enforcing its order of arrest against Mr. Alex A. Lorayes pending the final termination of the case before RTC Branch 52, Sorsogon upon the posting of a cash bond by the Land Bank.
>
> SO ORDERED.[15]

The dispositive portion of the 29 January 2001 Order of the RTC clearly states that "the respondent Provincial Adjudicator of the DARAB x x x is enjoined x x x from enforcing its order of arrest against Mr. Alex A. Lorayes **pending the final termination of the case before RTC Branch 52, Sorsogon upon the posting of a cash bond by Land Bank**." Thus, LBP cannot withdraw the bond pending final determination of the amount of just compensation for the property.

In its 14 October 1998 Decision, the DARAB set the amount of just compensation for the property at ₱10,956,963.25 and

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[14] *Supra* note 7, at 760-761.

[15] *Rollo*, p. 12.

ordered LBP to pay Listana the amount. On 18 June 1999, the PARAD issued a writ of execution ordering Lorayes to pay Listana the amount. Lorayes refused and, later, LBP filed with the RTC a petition for injunction with application for the issuance of a writ of preliminary injunction.

An applicant for preliminary injunction is required to file a bond executed to the party or person enjoined, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction. Section 4(b), Rule 58 of the Rules of Court states:

> SEC. 4. *Verified application and bond for preliminary injunction or temporary restraining order*. — A preliminary injunction or temporary restraining order may be granted only when:
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> x x x x x x x x x
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> (b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

As correctly ruled by the lower courts, the ₱5,644,773.02 bond shall answer for the damages Listana may sustain if the courts finally uphold the ₱10,956,963.25 just compensation set by the DARAB. In *Republic v. Caguioa*,[16] the Court held that, "The purpose of the injunction bond is to protect the defendant against loss or damage by reason of the injunction in case the court finally decides that the plaintiff was not entitled to it, and the bond is usually conditioned accordingly."[17]

The SAC has original and exclusive jurisdiction over petitions for determination of the amount of just compensation of properties acquired under RA No. 6657. Administrative agencies have no

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[16] G.R. No. 168584, 15 October 2007, 536 SCRA 193.

[17] *Id.* at 223.

jurisdiction over just compensation cases. Section 57 of RA No. 6657 states that, "The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." In *Land Bank of the Philippines v. Wycoco*,[18] citing *Republic v. Court of Appeals*,[19] the Court held that:

> In *Republic v. Court of Appeals*, it was held that **Special Agrarian Courts are given original and exclusive jurisdiction over** two categories of cases, to wit: (1) **all petitions for the determination of just compensation**; and (2) the prosecution of all criminal offenses under R.A. No. 6657. x x x **The DAR, as an administrative agency, cannot be granted jurisdiction over cases of eminent domain and over criminal cases. The valuation of property in eminent domain is essentially a judicial function which is vested with the Special Agrarian Courts and cannot be lodged with administrative agencies**.[20] (Emphasis supplied)

Thus, as a rule, the DARAB's decision setting the amount of just compensation is merely preliminary and not executory if challenged before the SAC. Execution pending "appeal" of the DARAB decision is allowed only on meritorious grounds.[21] Even then, it is the SAC, not the DARAB, that can grant execution pending "appeal" because the SAC has original and exclusive jurisdiction over just compensation cases. The determination of the amount of just compensation is a judicial function that cannot be usurped by administrative agencies. In *Apo Fruits Corporation v. Court of Appeals*,[22] the Court held that:

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[18] 464 Phil. 83 (2004).

[19] 331 Phil. 1071 (1996).

[20] *Supra*, at 94.

[21] Section 2 of the DARAB Rules of Procedure states that:

> Any motion for execution of the decision of the Adjudicator pending appeal shall be filed before the Board which may grant the same upon meritorious grounds, upon the posting of a sufficient bond in the amount conditioned for the payment of damages which the aggrieved party may suffer, in the event that the final order or decision is reversed on appeal, provided that the bond requirement shall not apply if the movant is a farmer-beneficiary/pauper litigant.

[22] G.R. No. 164195, 6 February 2007, 514 SCRA 537.

It is now settled that the valuation of property in eminent domain is essentially a judicial function which is vested with the RTC acting as Special Agrarian Court. The same cannot be lodged with administrative agencies and may not be usurped by any other branch or official of the government.[23]

In the present case, LBP filed with the SAC a petition for determination of the amount of just compensation on 6 September 1999. The PARAD issued the *alias* writ of execution and warrant of arrest on 27 November 2000 and 3 January 2001, respectively. The writ of execution and warrant of arrest were invalid because the 14 October 1998 Decision of the DARAB setting the amount at ₱10,956,963.25 was merely preliminary and not executory.

In any event, the Court has reinstated the 29 January 2001 Order of the RTC enjoining the PARAD from implementing the warrant of arrest pending final determination of the amount of just compensation for the property. *Land Bank of the Philippines v. Listana, Sr.* has long become final and executory and can no longer be disturbed. Consequently, LBP cannot withdraw the ₱5,644,773.02 cash bond which is a condition for the issuance of the writ of preliminary injunction.

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 30 January 2008 Decision and 6 May 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 92701.

SO ORDERED.

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

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[23] *Id.* at 560.

THIRD DIVISION

[G.R. No. 183092. May 30, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO SABELLA *y* BRAGAIS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — When an accused admits killing the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim. To escape liability, one who admits killing another in the name of self-defense bears the burden of proving: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense.

2. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; EXPLAINED; NO SELF-DEFENSE UNLESS THE VICTIM FIRST COMMITTED UNLAWFUL AGGRESSION AGAINST THE PERSON WHO RESORTED TO SELF-DEFENSE. — The most important element in self-defense is unlawful aggression — there can be no self-defense unless the victim first committed unlawful aggression against the person who resorted to self-defense. Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger thereof, not just a threatening or intimidating attitude. In this case, the appellant miserably failed to prove unlawful aggression on the part of Labides. As both the RTC and the CA observed, there was no evidence to support the appellant's claim that Labides broke into his home by destroying the door. Nor was there any evidence that Labides tried to attack him with a piece of wood. The appellant himself admitted that he did not sustain any injury due to the incident.

3. ID.; ID.; ID.; THE NUMBER, LOCATION AND SEVERITY OF THE HACK WOUNDS THAT THE APPELLANT INFLICTED ON THE VICTIM INDICATE AN INTENTION

TO KILL, AND NOT MERELY TO WOUND OR DEFEND. — In contrast, the physical evidence belies the appellant's claim of self-defense. The number, location and severity of the hack wounds the appellant inflicted on Labides all indicate an intention to kill, and not merely wound or defend. Furthermore, Dr. Atanacio's postmortem findings are consistent with Competente's eyewitness account, and are further corroborated by Labides' ante-mortem statement to Paterno Laurenio less than an hour after the stabbing. The totality of this evidence proves beyond reasonable doubt that the aggressor was in fact the appellant and not Labides.

4. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED WHERE THE VICTIM WAS UNARMED AND COMPLETELY UNAWARE OF ANY IMPENDING DANGER TO HIS LIFE WHEN HE WAS ATTACKED BY THE APPELLANT; IMPOSITION OF THE PENALTY OF *RECLUSION PERPETUA*, PROPER. — Both the RTC and the CA correctly appreciated the qualifying circumstance of treachery. From the established set of facts, the appellant's attack on Labides was deliberate, sudden and unexpected; the victim was unarmed and completely unaware of any impending danger to his life. The treachery employed is all the more emphasized when we recall that the appellant stabbed the victim a second time in the back, despite the lack of any resistance from Labides, and even after Labides had already been stabbed in the stomach. Under the circumstances, the RTC and the CA correctly sentenced the appellant to suffer the penalty of *reclusion perpetua*, regardless of the presence of the mitigating circumstance of voluntary surrender.

5. ID.; MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT; AWARD OF EXEMPLARY DAMAGES FIXED AT PHP30,000.00 IN CONFORMITY WITH RECENT JURISPRUDENCE. — While we affirm the CA's factual findings and the imprisonment imposed, we find it necessary to award the heirs of Prudencio Labides with exemplary damages, in keeping with Article 2230 of the Civil Code, which provides, "[i]n criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances." The award of exemplary damages is fixed at ₱30,000.00 to conform with recent jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We decide the appeal, filed by accused Antonio Sabella y Bragais (*appellant*), from the March 4, 2008 Decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 01958.[1] The appealed Decision affirmed with modification the Decision of the Regional Trial Court (RTC) of San Jose, Camarines Sur, Branch 30, in Criminal Case No. T-1934, finding the appellant guilty with the murder, qualified by treachery, of Prudencio Labides, and sentencing him to suffer the penalty of *reclusion perpetua*.

The Factual Antecedents

On November 19, 1998, the prosecution charged the appellant with murder[2] before the RTC, under the following information:

That on or about the 28th day of September 1998 in the evening thereof, at Barangay Nato, Municipality of Sagñay, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court the above-named accused with intent to kill by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously stab from behind with the use of a bolo commonly known as "palas" one Prudencio Labides, thus inflicting upon the victim mortal stab wounds as shown in the necropsy report issued by Roger E. Atanacio, Municipal Health Officer, Sagñay, Camarines Sur, which was the direct and immediate cause of his

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[1] Penned by Associate Justice Ramon A. Bato, Jr., and concurred in by Associate Justice Andres B. Reyes, Jr. and Associate Justice Jose C. Mendoza (now a member of this Court) of the Sixth Division of the CA; *rollo*, pp. 3-10.

[2] Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 or the Death Penalty Law.

instantaneous death, to the damage and prejudice of the heirs of the late Prudencio Labides.[3]

The appellant pleaded not guilty on arraignment and interposed self-defense at the pre-trial.[4] Pursuant to Section 11(e), Rule 119 of the Rules of Court, a reverse trial ensued.

The Appellant's Version

The evidence for the appellant consisted of his testimony, the testimonies of four (4) witnesses, namely, Virgilio Bolima, Raymundo Melchor, Marilyn Palma and Leonardo Credo, the formal presentation of the excerpts of the police blotter signed by Police Inspector Efren Moreno, the *bolo* with its scabbard which the appellant surrendered to the police authorities of Sagñay, Camarines Sur, and a sketch.

The appellant's evidence and version of events are summarized below.

At about 9:00 p.m. of September 28, 1998, the appellant was sleeping when he was awakened by the noise of someone trying to break into his house. Once inside, the unidentified man attacked him with a piece of rounded wood, but he parried the blow and took hold, from his bedside, of an object that he initially thought was a nightstick. He hit the man once, and only then realized that his weapon was a *bolo*. Wounded, the unidentified man went to the lighted portion of his residence. The appellant immediately recognized the man as Prudencio Labides. After Labides left, the appellant immediately surrendered to the police at its station in Sagñay, Camarines Sur and turned over his *bolo*.[5]

The appellant's story was corroborated by the testimonies of Leonardo Credo and Virgilio Bolima who claimed to be in the vicinity of the appellant's house on the night of the incident. According to the two witnesses, they saw Labides, who appeared to be wounded, coming out of the appellant's house into the

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[3] CA *rollo*, p. 8.

[4] Original records, p. 33.

[5] TSN, March 24, 1999, pp. 2-5.

illuminated portion of the road from where he shouted for help. Caught by surprise, the two witnesses did not help Labides. Subsequently, they saw two (2) men arrive in a tricycle. They assisted Labides in boarding the tricycle, which then drove away in the direction of the *poblacion* of Sagñay, Camarines Sur.[6]

The Prosecution's Version

The evidence for the prosecution consisted of the testimonies of the victim's wife, Alicia Labides, and four (4) witnesses, namely, Willy Duro, Romulo Competente, Paterno Laurenio and Dr. Roger Atanacio; the formal presentation of the Necropsy Report signed by Dr. Roger Atanacio; the appellant's *bolo*; the list of funeral and other expenses incurred by the victim's wife, and the latter's sworn statement. From these pieces of evidence, we reconstruct the prosecution's version of events summarized below.

In the evening of September 28, 1998, at approximately 9:00 p.m., Romulo Competente was walking home after talking to the victim at Marcos Verdeflor's home. Along the way, Competente encountered the appellant who suddenly hit him in the back with a *bolo* and threatened to cut off his head if he did not go home. Feeling pain in his back due to the blow, Competente decided to rest beside a nearby banana plant. Moments later, he saw the appellant stab Prudencio Labides (who had just left Marcos Verdeflor's house) in the abdomen with a *bolo* about two (2) feet long. When Labides turned away from the appellant, the latter stabbed Labides a second time in the back. Fearful because of what he had just witnessed, Competente hurried home.[7]

Meanwhile, Marcos Verdeflor appeared at Willy Duro's house to ask for help for Labides. Duro and Verdeflor boarded Duro's tricycle and proceeded to Kikoy Verdeflor's yard where Labides laid wounded and bleeding. According to Duro, while they were helping Labides into his tricycle, he saw the appellant, ten meters away, still holding the *bolo*. Duro at that point heard the appellant

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[6] *Rollo*, p. 26.

[7] TSN, March 13, 2000, pp. 4-6.

say, "[*y*]*ou must not bring him (Prudencio) anymore to the hospital because he will not survive; that is the way to kill a man*."[8]

Duro and Verdeflor then brought Labides to Paterno Laurenio's house to ask for the latter's assistance in getting an ambulance.[9] When Laurenio asked Labides who stabbed him, Labides replied "Antonio Sabella."[10] Laurenio further testified that at the time they loaded the victim into the ambulance, Labides was already "*lupaypay*" or very weak.[11] Labides was declared dead on arrival, when they arrived at the Bicol Medical Center in Naga City.[12]

Dr. Roger Atanacio's postmortem examination revealed that Labides died due to massive blood loss from two stab wounds sustained in the abdomen and at the back.[13] He described the two wounds as follows:

1. Stabbed (sic) wound, 3 inches long, vertical, 1 inch above umbilicus, along median line with intestinal evisceration.
2. Stabbed (sic) wound, 2 inches long, 3 inches depth, vertical, left, lumbar area.

CAUSE OF DEATH: HEMORRHAGE.[14]

Alicia Labides, the victim's widow, testified that she spent ₱30,718.00 for the victim's wake and burial, evidenced by a list of expenses.[15]

The RTC Ruling

In its July 16, 2001 Decision, the RTC found the appellant guilty of murder. In brushing aside the appellant's claim of

[8] CA *rollo,* p. 31.

[9] TSN, February 16, 2000, pp. 3-6.

[10] TSN, January 9, 2000, p. 10.

[11] *Id.* at 11.

[12] *Id.* at 12.

[13] TSN, February 16, 2000, pp. 16-17; Exhibit "A", original records, p. 2.

[14] CA *rollo,* pp. 51-52.

[15] TSN, December 12, 2000, p. 7; Exhibit "X", original records, p. 293.

self-defense, the RTC noted that the appellant failed to establish unlawful aggression on the part of Labides. The RTC observed that the appellant failed to produce any evidence to support his claim that Labides broke into his house, such as evidence of a damaged door or any damage done to the house. The appellant also failed to introduce into evidence the piece of wood that Labides allegedly tried to attack him with. In contrast, Dr. Atanacio's testimony on the number, location and severity of Labides' wounds disproved the appellant's claim of self-defense.

The RTC also gave credence to the positive testimony of the prosecution witnesses, particularly Laurenio's testimony that Labides identified the appellant as his assailant before he died, classifying the statement as a dying declaration.

The RTC appreciated the qualifying circumstance of treachery because the attack was sudden and unexpected, rendering the victim unable and unprepared to defend himself. But the court disregarded the aggravating circumstance of evident premeditation because it was not duly established at the trial. Appreciating in the appellant's favor the mitigating circumstance of voluntary surrender, the RTC sentenced the appellant to suffer the penalty of *reclusion perpetua*. The RTC ordered the appellant to pay the heirs of the victim ₱50,000.00 as civil indemnity and ₱30,718.00 as actual damages for the wake and burial expenses.[16]

The CA Ruling

On intermediate appellate review, the CA affirmed the findings of the RTC, but modified the award of damages. It deleted the award of ₱30,718.00 as actual damages for lack of receipts. In lieu thereof, the CA awarded ₱25,000.00 as temperate damages. The appellate court also awarded ₱50,000.00 as moral damages.[17]

From the CA, the case is now with us for final review.

Our Ruling

We affirm the appellant's guilt.

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[16] Original records, pp. 381-403.

[17] The dispositive portion of the CA Decision reads:

When an accused admits killing the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[18]

To escape liability, one who admits killing another in the name of self-defense bears the burden of proving: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense.[19]

The most important element in self-defense is unlawful aggression — there can be no self-defense unless the victim first committed unlawful aggression against the person who resorted to self-defense.[20] Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger thereof, not just a threatening or intimidating attitude.[21]

In this case, the appellant miserably failed to prove unlawful aggression on the part of Labides. As both the RTC and the CA observed, there was no evidence to support the appellant's

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WHEREFORE, the Decision dated July 16, 2001 of the Regional Trial Court of San Jose, Camarines Sur, Branch 30, in Criminal Case No. T-1934 finding appellant Antonio Sabella guilty of murder, and sentencing him to suffer the penalty of *reclusion perpetua* is AFFIRMED with MODIFICATIONS. The actual damages awarded by the trial court is hereby DELETED, in its stead, appellant is ordered to pay the heirs of the victim temperate damages in the amount of ₱25,000.00. Appellant is further ordered to pay the heirs of the victim the amount of ₱50,000.00 as moral damages aside from the ₱50,000.00 civil indemnity awarded by the trial court.

SO ORDERED. (*CA rollo*, pp. 120-121).

[18] *People v. Tagana*, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 634.

[19] *People v. Manulit*, G.R. No. 192581, November 17, 2010; and *People v. Lalongisip*, G.R. No. 188331, June 16, 2010, 621 SCRA 169, 177.

[20] *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 540.

[21] *Toledo v. People*, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 109.

claim that Labides broke into his home by destroying the door. Nor was there any evidence that Labides tried to attack him with a piece of wood. The appellant himself admitted that he did not sustain any injury due to the incident.

In contrast, the physical evidence belies the appellant's claim of self-defense. The number, location and severity of the hack wounds the appellant inflicted on Labides all indicate an intention to kill, and not merely wound or defend. Furthermore, Dr. Atanacio's postmortem findings are consistent with Competente's eyewitness account, and are further corroborated by Labides' ante-mortem statement to Paterno Laurenio less than an hour after the stabbing. The totality of this evidence proves beyond reasonable doubt that the aggressor was in fact the appellant and not Labides.

Both the RTC and the CA correctly appreciated the qualifying circumstance of treachery. From the established set of facts, the appellant's attack on Labides was deliberate, sudden and unexpected; the victim was unarmed and completely unaware of any impending danger to his life.[22] The treachery employed is all the more emphasized when we recall that the appellant stabbed the victim a second time in the back, despite the lack of any resistance from Labides, and even after Labides had already been stabbed in the stomach. Under the circumstances, the RTC and the CA correctly sentenced the appellant to suffer the penalty of *reclusion perpetua,* regardless of the presence of the mitigating circumstance of voluntary surrender.[23]

While we affirm the CA's factual findings and the imprisonment imposed, we find it necessary to award the heirs of Prudencio Labides with exemplary damages, in keeping with Article 2230

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[22] *People v. Torres,* G.R. No. 176262, September 11, 2007, 532 SCRA 654, 667; and *People v. Albarido,* G.R. No. 102367, October 25, 2001, 368 SCRA 194, 208.

[23] Article 63(3) of the Revised Penal Code reads:

(3) When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

of the Civil Code, which provides, "[i]n criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances." The award of exemplary damages is fixed at ₱30,000.00 to conform with recent jurisprudence.[24]

WHEREFORE, the March 4, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01958 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Antonio Sabella *y* Bragais is found guilty of murder as defined and penalized in Article 248 of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the heirs of Prudencio Labides ₱50,000.00 as civil indemnity *ex delicto*, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183576. May 30, 2011]

DIAMOND DRILLING CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **NEWMONT PHILIPPINES, INCORPORATED,** *respondent.*

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[24] *People v. Dela Cruz,* G.R. No. 188353, February 16, 2010, 612 SCRA 738, 752; and *People v. Gutierrez,* G.R. No. 188602, February 4, 2010, 611 SCRA 633, 647.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; ADMINISTRATIVE ORDER NO. 63; ACCEPTANCE AND EVALUATION OF FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT (FTAA); WHEN THERE ARE TWO OR MORE APPLICANTS IN THE SAME AREA, PRIORITY SHALL BE GIVEN TO THE APPLICANT THAT FIRST FILED ITS APPLICATION. — It is clear from Section 8 of DAO 63 that the MGB Central Office processes all FTAA applications after payment of the requisite fees. Section 8 requires the FTAA applicant to furnish the MGB Regional Office a copy of the FTAA application within 72 hours from filing of the FTAA application. The Regional Office verifies the area that an applicant intends to utilize, and declares the availability of the area for FTAA application. The Regional Office will then submit its recommendation to the MGB Central Office within thirty days from receipt by the Regional Office of a copy of the FTAA application from the applicant. However, when there are two or more applicants in the same area, priority shall be given to the applicant that first filed its application. In the present case, the records show that Newmont filed its FTAA applications with the MGB Central Office in Quezon City on 20 December 1994. After Newmont paid the filing and processing fees, the MGB Central Office registered Newmont's FTAA applications on the same date. On the other hand, Diamond Drilling filed its MPSA application with the MGB-CAR Regional Office in Baguio City on 20 December 1994. However, since the pertinent documents needed by the MGB-CAR Regional Office were lacking, it took two more days for Diamond Drilling to complete the requirements. Diamond Drilling paid its filing and processing fees only on 22 December 1994 or two days after Newmont's FTAA applications were registered with the MGB Central Office. Thus, Diamond Drilling's MPSA application was registered by the MGB-CAR Regional Office only on 22 December 1994. Since Newmont's FTAA applications preceded that of Diamond Drilling's MPSA application, priority should be given to Newmont. Section 8 of DAO 63 is clear. It states that in the event there are two or more applicants over the

same area, priority shall be given to the applicant that first filed its application.

2. ID.; ID.; ID.; ID.; ID.; ID.; THE PROPER REGIONAL OFFICE MOST BE FURNISHED WITH A COPY OF THE FTAA APPLICATION WITHIN 72 HOURS FROM FILING; A FACSIMILE COPY OF THE FTAA APPLICATION IS SUFFICIENT COMPLIANCE WITH THE REQUIREMENT. — On the requirement that the applicant should furnish the proper MGB Regional Office a copy of the FTAA application within 72 hours from filing, the CA, in its Decision dated 16 January 2008, stated: x x x. In any case, Newmont satisfied the "*72-hour requirement.*" The MGB Regional Office of CAR found — as confirmed by the Board — that on 21 December 1994, its Regional Technical Director Office received a facsimile copy of the letter of Newmont with the latter's FTAA application attached thereto. x x x. Indeed, the facsimile copy of Newmont's covering letter and FTAA application satisfy the requirement of DAO No. 63, for said order did not specify the mode of service and the kind of copy that must be furnished to the MGB Regional Office. x x x. Thus, Newmont in fact furnished the MGB-CAR Regional Office with copies of its FTAA applications, through fax transmission, within 72 hours from filing of the FTAA applications. Considering the distance between Quezon City and Baguio City where the MGB-CAR Regional Office is located, and the requirement to furnish the proper Regional Office (some of which are located in Visayas and Mindanao) a copy of the FTAA application within a short period of 72 hours, a fax machine copy is a reasonable and sufficient mode of serving a copy of the FTAA application to the proper Regional Office. We note that Section 8 of DAO 63 does not specify how a copy of the FTAA application should be furnished to the proper Regional Office.

3. ID.; ID.; ID.; ID.; ID.; PREFERENTIAL RIGHT GIVEN TO THE FTAA APPLICATIONS OF THE RESPONDENT, AFFIRMED. — Newmont clearly satisfied the requirements for the acceptance and evaluation of its FTAA applications with the MGB. Being the first to file its FTAA applications ahead of Diamond Drilling's MPSA application, and having furnished copies of its FTAA applications to the MGB-CAR Regional Office within 72 hours from filing, Newmont must

be given preferential right to utilize the area included in its FTAA applications.

APPEARANCES OF COUNSEL

Pablo T. Ayson, Jr. for petitioner.
Quisumbing Torres for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition[1] for review on *certiorari* assailing the Decision[2] dated 16 January 2008 and Resolution[3] dated 8 July 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96093.

The Facts

On 20 December 1994, respondent Newmont Philippines Incorporated (Newmont) (now known as the Cordillera Exploration Company Incorporated) filed eight applications[4] for Financial or Technical Assistance (FTAA) with the Central Office Technical Secretariat of the Mines and Geosciences Bureau (MGB) in Quezon City pursuant to Executive Order No. 279[5] (EO 279) and Department of Environment and Natural Resources

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 10-17. Penned by Justice Marlene Gonzales-Sison with Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring.

[3] *Id.* at 19-22.

[4] *Id.* at 514-524.

[5] Authorizing the Secretary of Environment and Natural Resources to Negotiate and Conclude Joint Venture, Co-Production, or Production-Sharing Agreements for the Exploration, Development and Utilization of Mineral Resources, and Prescribing the Guidelines for Such Agreements and Those Agreements Involving Technical or Financial Assistance by Foreign-Owned Corporations for Large-Scale Exploration, Development and Utilization of Minerals; issued on 25 July 1987.

(DENR) Administrative Order No. 63[6] (DAO 63), series of 1991. Newmont wanted to explore and develop large gold deposits in the Central Cordillera, particularly the areas situated in Abra, Benguet, Cagayan, Ilocos Sur, Ilocos Norte, Ifugao, Kalinga-Apayao, Mountain Province, Nueva Vizcaya and Pangasinan, comprising a maximum contract area[7] of 100,000 hectares[8] of land for each application.

On the same date, Newmont paid the corresponding filing and processing fees.[9] MGB registered Newmont's FTAA applications on the same day of filing. Thereafter, Newmont furnished through fax transmission the MGB Regional Office in the Cordillera Administrative Region (MGB-CAR) with its letter-application, sketch map and coordinates defining the area of its FTAA applications.[10] The MGB-CAR received the fax

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[6] Guidelines for the Acceptance, Consideration and Evaluation of Financial or Technical Assistance Agreement Proposals; signed on 12 December 1991.

[7] Section 1.a of DENR Department Administrative Order No. 63, series of 1991:

> Section 1. *Definition of Terms*. — As used in and for the purposes of this Order, the following words and terms, whether in singular or plural, shall have the following respective meanings:
>
> 1.a **Contract Area means the area originally awarded under FTAA without reference to region or province**. x x x (Emphasis supplied)

[8] Section 6.a of DENR Department Administrative Order No. 63, series of 1991:

> Section 6. *Maximum Contract and Project Areas Allowed*. —
>
> x x x x x x x x x
>
> **The maximum contract area shall be**:
>
> 6.a **1,235 meridional blocks or 100,000 hectares onshore**.
>
> 6.b 16,000 meridional blocks or 1,296,000 hectares offshore reckoned from the 100 meters from the shore waterlines at mean low tide extending seaward.
>
> 6.c Combination of a & b provided that it shall not exceed the maximum limits for onshore and offshore areas. (Emphasis supplied)

[9] As evidenced by Official Receipt No. 9299562 V dated 20 December 1994; *rollo*, p. 525.

[10] *Id.* at 526.

machine copies of the letter and other pertinent documents on 21 December 1994.

Petitioner Diamond Drilling Corporation of the Philippines (Diamond Drilling) likewise filed on 20 December 1994 an application for Mineral Production Sharing Agreement (MPSA), covering 4,860 hectares of land in the areas situated in Benguet and Mountain Province, with the MGB-CAR pursuant to EO 279, as implemented by DENR Administrative Order No. 57.[11]

Pending verification by the Survey Section of the MGB-CAR on the availability of the area applied for, the Mining Recorder of the MGB-CAR advised Diamond Drilling to first register its Articles of Incorporation, By-Laws and Secretary's Certificate with the Securities and Exchange Commission.[12] On 22 December

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[11] Guidelines on Mineral Production Sharing Agreement under Executive Order No. 279; signed on 23 June 1989.

[12] Section 3.5, Article 3 of DENR Administrative Order No. 57, series of 1989:

Section 3.5. Award of Production Sharing Agreement

x x x x x x x x x

Minimum Requirements

Regardless of whether the Agreement shall be awarded by bidding or negotiation, the following minimum requirements shall be submitted by prospective bidders and proponents:

x x x x x x x x x

b. *For Corporations, Partnerships, Associations*

i. Certified photocopy of Certificate of Registration issued by the Securities and Exchange Commission (SEC) or the concerned authorized government agency;

ii. Certified photocopy of the Articles of Incorporation, Partnership/ Association and By-Laws;

iii. Personal data sheets of the current directors and officers, including their nationalities, bio-data, and relevant experiences or annual report;

iv. Audited Financial Statements for the three (3) immediately preceding years, if applicable;

v. Proof of sufficiency of capital and credit lines;

vi. Authorizations to the Secretary or his representative to verify submitted information.

1994, Diamond Drilling complied with the requirements. Since the area as checked by the MGB-CAR in its records was open for mining location, Diamond Drilling paid for the filing and processing fees on the same date.[13] The MGB-CAR then registered Diamond Drilling's MPSA application.[14]

Upon verification, however, the MGB-CAR found that Diamond Drilling's MPSA application was in conflict with a portion of one of Newmont's FTAA applications.[15]

Meanwhile, on 14 April 1995, Republic Act No. 7942[16] (RA 7942) or the Philippine Mining Act of 1995 took effect.

In a letter dated 4 October 1995, Newmont wrote the MGB requesting for an opinion on the applicability of Section 8 of DAO 63, particularly the provision which requires an FTAA applicant to furnish the MGB Regional Office with a copy of the FTAA application within 72 hours from filing.

In a letter-opinion[17] dated 25 October 1995, the Director of MGB-CAR replied:

> In reply therewith, please be advised as follows:
>
> 1. FTAA proposals/applications filed and accepted by MGB are closed to subsequent mineral rights applications notwithstanding the the fact that the MGB has not furnished a copy thereof to concerned DENR Regional Office within 72 hours. We feel that the inclusion of said period is not a mandatory provision but merely intended to facilitate the processing of FTAA applications; and
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> 2. While it appears that there is no obligation on the part of the FTAA applicant to furnish said copy to concerned DENR Regional

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[13] As evidenced by Official Receipt No. 8263500 A dated 22 December 1994.

[14] Designated as MPSA No. 048; *rollo*, pp. 91-92.

[15] *Id.* at 548; copy of a map showing the conflict area between Newmont's FTAA applications and Diamond Drilling's MPSA application.

[16] An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation.

[17] *Rollo*, p. 545.

Office, yet, we likewise feel that said applicant is not precluded from doing so for the same reason abovementioned, that is, to facilitate the processing of the FTAA application. x x x

However, in a letter-opinion[18] dated 23 February 1996, the same Director of MGB-CAR reversed his earlier opinion stating:

x x x Upon thorough study, we believe that when the regulations at that time (DENR Administrative Order No. 63) requires that a copy of the FTAA proposal be furnished to the DENR Regional Office concerned within 72 hours from filing thereof, it is mandatory, notwithstanding our previous opinion on the matter, the purpose being is to notify the said regional office of the existence of said application and therefore they should no longer accept other applications that are in conflict therewith. We cannot blame the Regional Office concerned in accepting applications for MPSA and other applications because the FTAA proponent failed to furnish them a copy of its FTAA proposal within the prescribed hours. x x x

On 2 August 1996, Diamond Drilling filed a protest[19] with the MGB-CAR. Diamond Drilling sought to annul the eight FTAA applications of Newmont and asked that it be granted preferential right over the areas covered by its MPSA application.

Meanwhile, due to the requirements of the new mining law,[20] Newmont, in a letter[21] dated 10 September 1996, gave notice

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[18] CA *rollo*, pp. 348-349.

[19] Docketed as MAC No. MGB-010.

[20] Section 34 of Republic Act No. 7942:

Section 34. *Maximum Contract Area.*— The **maximum contract area that may be granted *per qualified person***, subject to relinquishment shall be:

a. **1,000 meridional blocks onshore** (approximately 81,000 hectares);

b. 4,000 meridional blocks offshore; or

c. Combinations of a and b provided that it shall not exceed the maximum limits for onshore and offshore areas. (Emphasis and underscoring supplied)

[21] *Rollo*, pp. 536-542.

to the MGB-CAR that it was relinquishing portions of the areas covered under its FTAA applications, reducing the total area applied for to 81,000 hectares pursuant to Section 257 (now Section 272[22]) of DENR Administrative Order No. 96-40 or the Revised Implementing Rules and Regulations of RA 7942.

In a Decision[23] dated 22 October 1997, the Panel of Arbitrators of the MGB-CAR decided the case in favor of Diamond Drilling. The Panel stated that the filing of the MPSA application on 20 December 1994 up to the payment made on 22 December 1994 was an uninterrupted and continuing act. Since the filing is the preparatory act and the registration is the conclusive act, then an MPSA application is considered accepted and registered upon verification that the area is free and open for location. The dispositive portion of the decision states:

IN LIGHT OF THE FOREGOING PREMISES, the panel weighed both allegations and arguments and considered the evidence and found the same strongly in favor of the protestant, ddcp (Diamond Drilling). NPI (Newmont) is hereby ordered to limit its area to 81,000 has. per province and amend its technical description and plan to exclude the area of DDCP. MPSA No. 48 is hereby declared

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[22] Section 272. *Non-Impairment of Existing Mining/Quarrying Rights.* — All valid and existing mining lease contracts, permits/licenses, leases pending renewal, Mineral Production Sharing Agreements, FTAA granted under Executive Order No. 279, at the date of the Act shall remain valid, shall not be impaired and shall be recognized by the Government x x x All pending applications for MPSA/FTAA covering forest land and Government Reservations shall not be required to re-apply for Exploration Permit: *Provided,* That **where the grant of such FTAA applications/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act, the applicant/proponent shall be given an extension of one (1) year, reckoned from September 13, 1996, to divest or relinquish** pursuant to Department Administrative Order No. 96-25 in favor of the Government, **areas in excess of the maximum area allowance provided under the Act.** x x x *Provided, finally,* That this provision is applicable only to all FTAA/MPSA applications filed under Department Administrative Order No. 63 prior to the effectivity of the Act and these implementing rules and regulations. (Emphasis supplied)

[23] *Rollo,* pp. 71-80.

valid, granting to DDCP the preferential right over the area covered by its MPSA.

SO ORDERED.[24]

Newmont appealed the decision of the MGB-CAR to the Mines Adjudication Board (MAB).[25] In a Decision[26] dated 24 April 2000, the MAB reversed the decision of the MGB-CAR and ruled in Newmont's favor. The MAB found that fax machine copies sent to the MGB-CAR of Newmont's FTAA applications showing the essential information, specifically the dates of filing and registration as well as technical descriptions, are valid documents since the law is silent as to the mode of service. The MAB added that since Newmont's FTAA applications were properly filed and formally accepted two days earlier than the date of acceptance of Diamond Drilling's MPSA application, the area covered by Newmont's FTAA applications should be considered closed to other mining applications. The dispositive portion states:

WHEREFORE, the foregoing premises considered, the appealed decision dated October 22, 1997 of the Panel of Arbitrators, DENR-CAR is hereby REVERSED and SET ASIDE and NPI's FTAA application is hereby SUSTAINED.

SO ORDERED.[27]

Diamond Drilling filed a motion for reconsideration which the MAB denied in a Resolution[28] dated 11 August 2006. Diamond Drilling then filed a petition[29] for review with the CA.

In a Decision[30] dated 16 January 2008, the CA affirmed the decision of the MAB. Diamond Drilling filed a motion for

[24] *Id.* at 80.

[25] Docketed as MAB Case No. 022-97.

[26] *Rollo*, pp. 81-86.

[27] *Id.* at 86.

[28] *Id.* at 87-90.

[29] Docketed as CA-G.R. SP No. 96093.

[30] *Supra* note 2.

reconsideration which the CA denied in a Resolution[31] dated 8 July 2008.

Hence, this petition.

The Issue

The main issue is whether the CA committed a reversible error in affirming the decision of the MAB giving preferential right to Newmont's FTAA applications over Diamond Drilling's MPSA application.

The Court's Ruling

The petition lacks merit.

Petitioner Diamond Drilling insists that the requirement of furnishing the MGB Regional Office a copy of the FTAA application within 72 hours is mandatory in character. Diamond Drilling adds that the transmission by Newmont of fax machine copies of its FTAA applications to the MGB Regional Office is not sufficient compliance with Section 8 of DAO 63. Thus, Diamond Drilling asserts that it has preferential rights over the area included in its MPSA application as against respondent Newmont.

Section 8 of DENR Administrative Order No. 63 states:

SEC. 8. Acceptance and Evaluation of FTAA. — **All FTAA proposals shall be filed with and accepted by the Central Office Technical Secretariat (MGB) after payment of the requisite fees to the Mines and Geosciences Bureau, copy furnished the Regional Office concerned within 72 hours. The Regional Office shall verify the area and declare the availability of the area for FTAA and shall submit its recommendations within thirty (30) days from receipt. In the event that there are two or more applicants over the same area, priority shall be given to the applicant who first filed his application.** In any case, the Undersecretaries for Planning, Policy and Natural Resources Management; Legal Services, Legislative, Liaison and Management of FASPO; Field Operations and Environment and Research, or its equivalent, shall be given

[31] *Supra* note 3.

ten (10) days from receipt of FTAA proposal within which to submit their comments/recommendations and the Regional Office, in the preparation of its recommendation shall consider the financial and technical capabilities of the applicant, in addition to the proposed Government share. Within five (5) working days from receipt of said recommendations, the Technical Secretariat shall consolidate all comments and recommendations thus received and shall forward the same to the members of the FTAA Negotiating Panel for evaluation at least within thirty (30) working days. (Emphasis supplied)

It is clear from Section 8 of DAO 63 that the MGB Central Office processes all FTAA applications after payment of the requisite fees. Section 8 requires the FTAA applicant to furnish the MGB Regional Office a copy of the FTAA application within 72 hours from filing of the FTAA application. The Regional Office verifies the area that an applicant intends to utilize, and declares the availability of the area for FTAA application. The Regional Office will then submit its recommendation to the MGB Central Office within thirty days from receipt by the Regional Office of a copy of the FTAA application from the applicant. However, when there are two or more applicants in the same area, priority shall be given to the applicant that first filed its application.

In the present case, the records show that Newmont filed its FTAA applications with the MGB Central Office in Quezon City on 20 December 1994. After Newmont paid the filing and processing fees, the MGB Central Office registered Newmont's FTAA applications on the same date. On the other hand, Diamond Drilling filed its MPSA application with the MGB-CAR Regional Office in Baguio City on 20 December 1994. However, since the pertinent documents needed by the MGB-CAR Regional Office were lacking, it took two more days for Diamond Drilling to complete the requirements. Diamond Drilling paid its filing and processing fees only on 22 December 1994 or two days after Newmont's FTAA applications were registered with the MGB Central Office. Thus, Diamond Drilling's MPSA application was registered by the MGB-CAR Regional Office only on 22 December 1994.

Since Newmont's FTAA applications preceded that of Diamond Drilling's MPSA application, priority should be given to Newmont. Section 8 of DAO 63 is clear. It states that in the event there are two or more applicants over the same area, priority shall be given to the applicant that first filed its application.

On the requirement that the applicant should furnish the proper MGB Regional Office a copy of the FTAA application within 72 hours from filing, the CA, in its Decision dated 16 January 2008, stated:

> x x x We rule that the requirement of DAO No. 63 that the MGB Regional Office concerned be furnished a copy of the FTAA application is merely directory in character. The word "*shall*," which seems to give the provision a mandatory character, precedes the filing of an FTAA application and not the furnishing of a copy of the same to the Regional office; hence to interpret the word "*shall*" as giving the latter a mandatory character is far-fetched. *A fortiori,* the purpose of said requirement is to notify the Regional Office concerned that an application for FTAA was filed with the Central Office Technical Secretariat (COTS) of the MGB so that the Regional Office may verify the area covered by the application and submit its recommendation concerning its availability. It must be stressed that the Regional Office concerned only has the authority to recommend; hence, its findings are not conclusive with COTS-MGB. It only performs an allied function to aid the COTS-MGB in arriving at the decision to grant or deny the application for FTAA. The power to grant or deny FTAA applications remain in the hands of the COTS-MGB. Accordingly, the "*72-hour requirement*" must be construed as directory and not mandatory in nature.

In any case, Newmont satisfied the "*72-hour requirement.*" The MGB Regional Office of CAR found — as confirmed by the Board – that on 21 December 1994, its Regional Technical Director Office received a facsimile copy of the letter of Newmont with the latter's FTAA application attached thereto. Based on this finding, the Board ruled that Newmont satisfied the "*72-hour requirement.*" The Board explains:

> "A fax machine copy of an application showing therein the essential information, specially the dates of filing and registration, and technical description is a valid document.

> Thus, NPI has shown to have complied with the required copy of furnishing MGDS/DENR-CAR within 72 hours."

Indeed, the facsimile copy of Newmont's covering letter and FTAA application satisfy the requirement of DAO No. 63, for said order did not specify the mode of service and the kind of copy that must be furnished to the MGB Regional Office. The order simply stated that the MGB Regional Office be furnished a copy of an an applicant's FTAA proposal. The order did not require personal service or service via mail; neither did the order require that an original or a certified true copy be furnished the Regional Office. Consistent with our ruling above, this is so, because the Regional Office only performs an allied function, the result of which is only recommendatory and conclusive with the COTS-MGB. In view of this, Newmont's manner of furnishing the MGB-CAR Regional Office of a copy of its FTAA application — through facsimile — cannot be validly questioned as improper. And, in as much as MGB-CAR Regional Office received the copy of Newmont's FTAA application on 21 December 1994, or approximately 24 hours from the day the same was filed in COTS-MGB, Section 8 of DAO No. 63 was satisfied. x x x[32]

> WHEREFORE, the petition is DISMISSED. The assailed Decision and Resolution of the Mines Adjudication Board giving preferential right to Newmont Philippines, Inc. over the area covered by its application for Financial or Technical Assistance Agreement, and excluding the Mineral Production Sharing Agreement of Diamond Drilling Corporation of the Philippines over the same area, is AFFIRMED.[33]

Thus, Newmont in fact furnished the MGB-CAR Regional Office with copies of its FTAA applications, through fax transmission, within 72 hours from filing of the FTAA applications. Considering the distance between Quezon City and Baguio City where the MGB-CAR Regional Office is located, and the requirement to furnish the proper Regional Office (some of which are located in Visayas and Mindanao) a copy of the FTAA application within a short period of 72 hours, a fax machine copy is a reasonable and sufficient mode of serving a copy of the FTAA application to the proper Regional Office. We note

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[32] *Rollo*, pp. 13-16.

[33] *Id.* at 16.

that Section 8 of DAO 63 does not specify how a copy of the FTAA application should be furnished to the proper Regional Office.

Newmont clearly satisfied the requirements for the acceptance and evaluation of its FTAA applications with the MGB. Being the first to file its FTAA applications ahead of Diamond Drilling's MPSA application, and having furnished copies of its FTAA applications to the MGB-CAR Regional Office within 72 hours from filing, Newmont must be given preferential right to utilize the area included in its FTAA applications.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 16 January 2008 and Resolution dated 8 July 2008 of the Court of Appeals in CA-G.R. SP No. 96093.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183811. May 30, 2011]

ROSALIA N. ESPINO, *petitioner, vs.* **SPOUSES SHARON SAMPANI BULUT and CELEBI BULUT,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF TITLE; THE NULLITY OF THE RECONSTITUTED CERTIFICATE DOES NOT BY ITSELF SETTLE THE ISSUE OF OWNERSHIP OVER THE PROPERTY; ISSUE OF OWNERSHIP MUST BE LITIGATED IN THE APPROPRIATE PROCEEDINGS NOT IN THE ACTION FOR THE ISSUANCE OF A NEW OWNER'S DUPLICATE CERTIFICATE OF TITLE OR IN THE PROCEEDINGS

TO ANNUL SUCH NEWLY ISSUED DUPLICATE. — Contrary to Espino's allegation, the trial court's 4 September 2006 Decision and the 23 March 2007 Writ of Preliminary Injunction did not declare that respondents are the "new owners" of the properties. While the trial court did restrain the Register of Deeds from accepting or registering any document executed by Espino and any person authorized by her that will in any way encumber or cause the transfer of the properties, the trial court did not adjudge respondents as the owners of the properties. Moreover, the trial court does not have jurisdiction to declare respondents as the "new owners" of the properties because this is not an issue in a petition for relief from judgment. In *Strait Times, Inc. v. Court of Appeals*, we stated: It is judicially settled that a trial court does not acquire jurisdiction over a petition for the issuance of a new owner's duplicate certificate of title, if the original is in fact not lost but is in the possession of an alleged buyer. Corollarily, such reconstituted certificate is itself void once the existence of the original is unquestionably demonstrated. **Nonetheless, the nullity of the reconstituted certificate does not by itself settle the issue of ownership or title over the property; much less does it vest such title upon the holder of the original certificate. The issue of ownership must be litigated in appropriate proceedings.** It cannot be determined in an action for the issuance of a new owner's duplicate certificate of title or in proceedings to annul such newly issued duplicate. In this case, respondents' possession of the eleven TCTs is not necessarily equivalent to ownership of the lands covered by the TCTs. The certificate of title, by itself, does not vest ownership; it is merely an evidence of title over a particular property. Again, the issue of ownership of the eleven properties must be litigated in the appropriate proceedings.

2. ID.; DAMAGES; MORAL DAMAGES; WHEN MAY BE AWARDED; MERE ALLEGATION OF SLEEPLESS NIGHTS AND MENTAL ANGUISH IS NOT SUFFICIENT BUT MUST BE SUBSTANTIATED DURING THE TRIAL. — There is nothing in the records that supports an award of moral damages. x x x. In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like. While respondents alleged sleepless nights and mental anguish in their petition for relief,

they failed to prove them during the trial. Mere allegations do not suffice. They must be substantiated. Furthermore, the trial court made no reference to any testimony of the respondents on their alleged physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury as would entitle them to moral damages.

3. ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AWARD THEREOF DELETED FOR LACK OF FACTUAL AND LEGAL BASIS. — Likewise, since respondents failed to satisfactorily establish their claim for moral damages, respondents are also not entitled to exemplary damages. x x x. An award of attorney's fees is an exception and there must be some compelling legal reason to bring the case within the exception and justify the award. In this case, none of the exceptions applies. Moreover, we already deleted the trial court's award of exemplary damages which might have served as its basis for awarding attorney's fees.

APPEARANCES OF COUNSEL

Danilo A. Soriano for petitioner.
Annalyn S. Dolor-Jubilo for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 14 April 2008 Decision[2] and 8 July 2008 Order[3] of the Regional Trial Court of Trece Martires City, Branch 23 (trial court). In its 14 April 2008 Decision, the trial court set aside its 4 September 2006 Decision and dismissed petitioner Rosalia N. Espino's (Espino) petition

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

[2] *Rollo*, pp. 31-36. Penned by Executive Judge Aurelio G. Icasiano, Jr.

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

for issuance of new owner's copies of Transfer Certificates of Title (TCT) Nos. T-72654, T-72655, T-72656, T-72657, T-72658, T-72659, T-72660, T-72661, T-72662, T-72663, and T-72664. In its 8 July 2008 Order, the trial court denied Espino's motion for reconsideration.

The Facts

Spouses Rosalia and Alfredo C. Espino (spouses Espino) are the registered owners of eleven adjacent lots situated in Tanza, Cavite and covered by TCT Nos. T-72654 to T-72664.

Sometime in January 2006, Espino lost the owner's duplicate copies of the eleven TCTs. On 23 March 2006, Espino reported the loss to the Register of Deeds of Trece Martires City. Espino also filed a petition for issuance of new owner's copies of the eleven TCTs before the trial court docketed as LRC Case No. 6832-462.

On 4 September 2006, the trial court granted Espino's petition. On 27 October 2006, new copies of the eleven TCTs were issued to Espino under Section 109[4] of the Land Registration Act.

On 4 January 2007, respondent spouses Sharon Sampani Bulut and Celebi Bulut (respondents) filed with the trial court a petition for relief from judgment.[5] Respondents claimed that they had actual possession of the owner's copies of the eleven

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[4] Section 109 of the Land Registration Act reads:

SEC. 109. If a duplicate certificate is lost or destroyed, or cannot be produced by a grantee, heir, devisee, assignee, or other person applying for the entry of a new certificate to him or for the registration of any instrument, a suggestion of the fact of such loss or destruction may be filed by the registered owner or other person in interest, and registered. The court may thereupon, upon the petition of the registered owner or other person in interest, after notice and hearing, direct the issue 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 the original duplicate for all the purposes of this Act.

[5] *Rollo*, pp. 39-45.

TCTs which had been declared lost and cancelled by the trial court. Respondents explained that on 12 April 2003, spouses Espino sold a parcel of land covered by TCT No. T-279982 to a certain Beauregard E. Lim (Lim).[6] Thereafter, Lim allegedly subdivided the property into eleven lots but the title remained in the name of spouses Espino because Lim lacked the funds to transfer the titles in his name. On 21 March 2006, Lim sold the eleven lots to respondents[7] and gave them the eleven owner's copies of the TCTs.[8] When respondents tried to register the properties in their name, they discovered the trial court's 4 September 2006 Decision and this prompted them to file the petition for relief from judgment.

On 9 January 2007, the trial court issued an *ex-parte* temporary restraining order.[9] Subsequently, on 30 January 2007, the trial court granted respondents' prayer for the issuance of a writ of preliminary injunction.[10] On 23 March 2007, the trial court issued the writ of preliminary injunction which provides:

> NOW THEREFORE, you are hereby RESTRAINED or PROHIBITED from accepting/registering any document executed by respondent Rosalia N. Espino and any person authorized by her that will in any way encumber or cause the transfer of the property covered by the following certificates of title, to wit:
>
> 1. Transfer Certificate of Title No. T-72654;
> 2. Transfer Certificate of Title No. T-72655;
> 3. Transfer Certificate of Title No. T-72656;
> 4. Transfer Certificate of Title No. T-72657;
> 5. Transfer Certificate of Title No. T-72658;
> 6. Transfer Certificate of Title No. T-72659;

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[6] *Id.* at 46-47. TCT No. 279982 was the mother title of the eleven properties. The deed of sale was not registered with the Register of Deeds, nor was it annotated in the certificate of title.

[7] *Id.* at 82-86. The deed of sale was not registered with the Register of Deeds, nor was it annotated in the certificates of title.

[8] *Id.* at 48-81.

[9] *Id.* at 95-96.

[10] *Id.* at 102-104.

7. Transfer Certificate of Title No. T-72660;
8. Transfer Certificate of Title No. T-72661;
9. Transfer Certificate of Title No. T-72662;
10. Transfer Certificate of Title No. T-72663; and
11. Transfer Certificate of Title No. T-72664.

Until and after the injunction is ordered revoked and/or will be made permanent.[11]

On 14 April 2008, the trial court granted respondents' petition for relief from judgment and declared the writ of preliminary injunction permanent. The trial court's 14 April 2008 Decision provides:

WHEREFORE, the Decision dated September 4, 2006 is set aside and the petition for the issuance of new owner's copies of Transfer Certificates of Title Nos. T-72654, T-72655, T-72656, T-72657, T-72658, T-72659, T-72660, T-72661, T-72662, T-72663 and T-72664 is DISMISSED.

The owner's copies of the above listed transfer certificates of title issued by the respondent Registry of Deeds for the City of Trece Martires by virtue of the Final Decision dated September 4, 2006 is declared null and void.

Respondent Rosalia Espino is likewise directed to pay petitioners Sps. Sharon and Celebi Bulut moral damages in the amount of Two Hundred Thousand (Php 200,000.00) Pesos; exemplary damages in the amount of One Hundred Thousand (Php 100,000.00) Pesos; and attorney's fees in the amount of Sixty Thousand (Php 60,000.00) Pesos.

SO ORDERED.[12]

The Ruling of the Trial Court

The trial court declared that Espino did not have possession of the eleven owner's copies of the TCTs because respondents had been in possession of the eleven titles from the time respondents bought the properties from Lim in 2006. The trial

[11] *Id.* at 106.

[12] *Id.* at 36.

court said that "when the original owner's copy of the title is in fact not lost but is in the possession of a new owner, being the alleged buyer," the trial court did not acquire jurisdiction over Espino's petition for issuance of new owner's copies of the eleven titles. The trial court also awarded respondents moral and exemplary damages and attorney's fees after it declared that Espino had the intent to defraud respondents when she executed the affidavit of loss and filed the petition.

The Issues

Espino raises the following issues:

1. Whether the trial court erred in recognizing and defending the alleged ownership rights of respondents as possessors of the eleven TCTs as against Espino, the registered owner of the properties; and
2. Whether the trial court erred in awarding damages to respondents.

The Ruling of the Court

The petition is partly meritorious.

According to Espino, the trial court decided on the issue of ownership of the properties when it permanently enjoined the Register of Deeds from accepting or registering any kind of conveyance that may be executed by Espino to any person except as to respondents. Espino adds that the trial court recognized the status of respondents as the "buyer" and "new owners" of the properties. Espino also denies that she deceived the trial court and defrauded respondents as there was no privity of contract between Espino and respondents. Espino maintains that she had no knowledge of the unregistered sales of the properties to Lim and the respondents. Espino adds that there was no fraud, bad faith or malice when she applied for the new owner's copies of the eleven TCTs.

Contrary to Espino's allegation, the trial court's 4 September 2006 Decision and the 23 March 2007 Writ of Preliminary Injunction did not declare that respondents are the "new owners" of the properties. While the trial court did restrain the Register

of Deeds from accepting or registering any document executed by Espino and any person authorized by her that will in any way encumber or cause the transfer of the properties, the trial court did not adjudge respondents as the owners of the properties.

Moreover, the trial court does not have jurisdiction to declare respondents as the "new owners" of the properties because this is not an issue in a petition for relief from judgment. In *Strait Times, Inc. v. Court of Appeals*,[13] we stated:

> It is judicially settled that a trial court does not acquire jurisdiction over a petition for the issuance of a new owner's duplicate certificate of title, if the original is in fact not lost but is in the possession of an alleged buyer. Corollarily, such reconstituted certificate is itself void once the existence of the original is unquestionably demonstrated. **Nonetheless, the nullity of the reconstituted certificate does not by itself settle the issue of ownership or title over the property; much less does it vest such title upon the holder of the original certificate. The issue of ownership must be litigated in appropriate proceedings.** It cannot be determined in an action for the issuance of a new owner's duplicate certificate of title or in proceedings to annul such newly issued duplicate.[14] (Emphasis supplied)

In this case, respondents' possession of the eleven TCTs is not necessarily equivalent to ownership of the lands covered by the TCTs. The certificate of title, by itself, does not vest ownership; it is merely an evidence of title over a particular property.[15] Again, the issue of ownership of the eleven properties must be litigated in the appropriate proceedings.

We, however, delete the award of moral and exemplary damages and attorney's fees for lack of factual and legal basis. There is nothing in the records that supports an award of moral damages. The trial court only said:

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[13] 356 Phil. 217 (1998).

[14] *Id.* at 220.

[15] *Id.*

The intention of respondent Rosalia Espino was to defraud the buyer of the land as in fact by her act of executing such affidavit of loss (Exhibit "E") she almost deceived this Court.[16]

In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like.[17] While respondents alleged sleepless nights and mental anguish in their petition for relief, they failed to prove them during the trial. Mere allegations do not suffice. They must be substantiated. Furthermore, the trial court made no reference to any testimony of the respondents on their alleged physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury as would entitle them to moral damages.

Likewise, since respondents failed to satisfactorily establish their claim for moral damages, respondents are also not entitled to exemplary damages. Article 2234 of the Civil Code provides:

> ART. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. x x x

As to the award of attorney's fees, Article 2208 of the Civil Code provides:

> ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> 1. When exemplary damages are awarded;
> 2. When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

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[16] *Rollo*, p. 35.

[17] *Villanueva v. Court of Appeals*, G.R. No. 132955, 27 October 2006, 505 SCRA 564; *Mahinay v. Velasquez, Jr.*, 464 Phil. 146 (2004).

3. In criminal cases of malicious prosecution against the plaintiff;
4. In case of a clearly unfounded civil action or proceeding against the plaintiff;
5. Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
6. In actions for legal support;
7. In actions for the recovery of wages of household helpers, laborers and skilled workers;
8. In actions for indemnity under workmen's compensation and employer's liability laws;
9. In a separate civil action to recover civil liability arising from a crime;
10. When at least double judicial costs are awarded;
11. In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

An award of attorney's fees is an exception and there must be some compelling legal reason to bring the case within the exception and justify the award.[18] In this case, none of the exceptions applies. Moreover, we already deleted the trial court's award of exemplary damages which might have served as its basis for awarding attorney's fees.

WHEREFORE, we *AFFIRM* with *MODIFICATION* the 14 April 2008 Decision and 8 July 2008 Order of the Regional Trial Court of Trece Martires City, Branch 23. We *DELETE* the award of moral and exemplary damages and attorney's fees.

SO ORDERED.

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

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[18] *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, G.R. Nos. 169408 and 170144, 30 April 2008, 553 SCRA 541.

SECOND DIVISION

[G.R. No. 184966. May 30, 2011]

HEIRS OF FELICIDAD *VDA. DE* DELA CRUZ namely: VIOLETA DEL ROSARIO, EMILIANA GARCIA SECRETARIO, and GRACE FERNANDEZ, *petitioners, vs.* **HEIRS OF PEDRO T. FAJARDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT. — Section 1 of Rule 45 states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth." In *Pagsibigan v. People*, the Court held that: A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.

2. ID.; ID.; FINDINGS OF FACTS BY QUASI-JUDICIAL AGENCIES; CONCLUSIVE UPON THE COURT IN THE ABSENCE OF PROOF OF GRAVE ERROR IN THE APPRECIATION OF FACTS; EXCEPTIONS. — In *Gandara Mill Supply v. NLRC*, the Court held that, "In a long line of cases, the Court has consistently ruled that findings of fact by quasi-judicial agencies x x x are conclusive upon the court in the absence of proof of grave error in the appreciation of facts." The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculation; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions

of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the facts set forth by the petitioner are not disputed by the respondent; and (9) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

3. ID.; CIVIL PROCEDURE; JUDGMENTS; EFFECT OF COMPROMISE AGREEMENT; APPLICATION IN CASE AT BAR. — The RTC's 28 August 2000 Decision has long become final and executory, thus, it can no longer be disturbed. *Vda. De* Dela Cruz entered into a compromise agreement with the heirs of Garces. There is no question that under the compromise agreement, the 619-square meter parcel of land covered by Emancipation Patent No. A-051521-H was given to Fajardo. The RTC approved the compromise agreement. The dispositive portion of the Decision states: WHEREFORE, premises considered, finding these "Transfers under PD No. 27" not contrary to law, morals, public order or policy and, further, the same having the approval of the defendant Land Bank and the defendant DAR, the foregoing compromise agreement, otherwise called "Deed of Transfer under P.D. No. 27," are hereby APPROVED, and judgment is hereby rendered in accordance with the terms and conditions thereof. The parties are hereby enjoined to comply strictly and in good faith with all the terms set forth in the aforesaid "Compromise Agreement." SO ORDERED. In *Inaldo v. Balagot*, the Court held that: A compromise agreement is final and executor. Such a final and executory judgment cannot be modified or amended. If an amendment is to be made, it may consist only of supplying an omission, or striking out a superfluity or interpreting an ambiguous phrase therein in relation to the body of the decision which gives it life.

APPEARANCES OF COUNSEL

Roger S. Diaz for petitioners.
Mario M. Pangilinan for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 29 August 2008 Decision[2] and 16 October 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 95554. The Court of Appeals affirmed the 1 March 2006 Decision[4] and 28 June 2006 Resolution[5] of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 10659. The DARAB affirmed the 29 December 2000 Decision[6] of the Provincial Agrarian Reform Adjudicator (PARAD) in DARAB Case No. 05261 'SNE' 00.

The Facts

Joaquin Garces (Garces) owned two parcels of land in Barangay Pambuan, Gapan, Nueva Ecija. The properties were covered by Transfer Certificate of Title Nos. NT-22566 and NT-7737-A and tenanted by Cervando Garcia (Garcia), Pedro Fajardo (Fajardo), and Felicidad *Vda. de* Dela Cruz (*Vda. de* Dela Cruz).

Pursuant to Presidential Decree No. 27, the Department of Agrarian Reform identified Garcia, Fajardo and *Vda. de* Dela Cruz as qualified tenant-farmers. On 5 April 1999, the heirs of Garces filed with the Regional Trial Court (RTC), Judicial Region 3, Branch 23, Cabanatuan City, acting as special agrarian court,

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[1] *Rollo*, pp. 27-92.

[2] *Id.* at 11-21. Penned by Associate Justice Sixto C. Marella, Jr., with Associate Justices Amelita G. Tolentino and Japar B. Dimaampao concurring.

[3] *Id.* at 23-24.

[4] *Id.* at 141-145. Penned by Assistant Secretary Edgar A. Igano, with Secretary Nasser C. Pangandaman, Assistant Secretary Augusto P. Quijano, Undersecretary Nestor R. Acosta, Acting Assistant Secretary Ma. Patricia Rualo-Bello and Assistant Secretary Delfin B. Samson concurring.

[5] *Id.* at 149-150.

[6] *Id.* at 135-138. Penned by Provincial Adjudicator Eulogio M. Mariano.

a petition for judicial determination of just compensation and payment of lease against Garcia, Fajardo and *Vda. de* Dela Cruz.

On 28 March 2000, during the pre-trial, the heirs of Garces entered into a compromise agreement with Garcia, Fajardo and *Vda. de* Dela Cruz. In its 28 August 2000 Decision,[7] the RTC approved the compromise agreement. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, finding these "Transfers under PD No. 27" not contrary to law, morals, public order or policy and, further, the same having the approval of the defendant Land Bank and the defendant DAR, the foregoing compromise agreement, otherwise called "Deed of Transfer under P.D. No. 27," are hereby APPROVED, and judgment is hereby rendered in accordance with the terms and conditions thereof.
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> The parties are hereby enjoined to comply strictly and in good faith with all the terms set forth in the aforesaid "Compromise Agreement."
>
> SO ORDERED.[8]

Pursuant to the compromise agreement, Garcia, Fajardo and *Vda. de* Dela Cruz were issued their corresponding certificates of land transfer and emancipation patents. The 28 August 2000 Decision became final and executory.

Vda. de Dela Cruz filed with the PARAD a petition for cancellation of Emancipation Patent No. A-051521-H issued to Fajardo. *Vda. de* Dela Cruz alleged that she, not Fajardo, was the actual tenant and possessor of the 619-square meter parcel of land covered by the emancipation patent.

The PARAD's Ruling

In his 29 December 2000 Decision, the PARAD dismissed the petition for cancellation of emancipation patent because *Vda. de* Dela Cruz failed to adduce substantial evidence. The PARAD held that:

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[7] *Id.* at 128-134. Penned by Presiding Judge Andres R. Amante, Jr.

[8] *Id.* at 133-134.

In view of these, the questioned emancipation patent was regularly been [sic] issued under the disputable presumption that official duty has been regularly performed by the employees/officials of the Department of Agrarian Reform as the same was made an integral part of the Deed of Transfer under PD 27 dated March 28, 2000 in favor of private respondent. The claim of the petitioner that the questioned emancipation patent has been erroneously issued in the name of the private respondent miserably failed to impress this Board. The burden of proof to show that the questioned emancipation patent was erroneously issued in the private respondent [sic] is on the petitioner. Absent convincing evidence to the contrary, the presumption of regularity in the performance of official functions has to be upheld. (*People vs. Lapura*, 255 SCRA 85) Although it is admitted that the questioned emancipation patent is covered by the homelot [sic] of the petitioner where her house is erected, the same was not meant that [sic] the said EP was erroneously issued in the name of the private respondent. This Board sees no errors whatsoever in the issuance of the said patent for the subject lot is indeed meant for the private respondent as the same was transferred by the former landowner, Joaquin Garces in his favor with the intervention of the DAR and LBP, which transfer was duly approved by a regular court. While it is true that private respondent has other lands (in the minimum ceiling required by law) including a homelot covered under OLT, herein petitioner also has other lands, which should also include her homelot. Hence, what should be enforced was the one that was given or allocated by the landowner to the petitioner, which is the area containing 2.100 has., as the 0.619 ha. is excluded from the said area. The 0.619 ha. is within the coverage of 2.0964 has., which is therefore indeed part and parcel of the land of the private respondent. Petitioner is estopped to state that she is entitled for an additional area of 0.619 ha. as the same was excluded or was never stated in her Deed of Transfer under PD 27.[9]

Vda. de Dela Cruz appealed to the DARAB.

The DARAB's Ruling

In its 1 March 2006 Decision, the DARAB affirmed the PARAD's 29 December 2000 Decision. The DARAB held that:

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[9] *Id.* at 138.

At the outset, it must be stressed that before an Emancipation Patent is issued to a farmer-beneficiary, procedures such as surveys, inspection, investigation, evaluation and endorsements are conducted *(15 September 1976 Memorandum)*. Only after this rigorous and exhaustive procedure will the Department of Agrarian Reform issue Emancipation Patents. Strong evidence is necessary in order to claim that these procedures have not been complied with. As held in the case of *Tatad vs. Garcia*, government officials are presumed to perform their functions with regularity and strong evidence is necessary to rebut this presumption. Petitioner did not present strong evidence to rebut such presumption, the EP issued in favor of respondent Fajardo is presumed to have been issued validly and with regularity.

Moreover, an Emancipation Patent holder acquires the vested right of absolute ownership in the landholding — a right which has become fixed and established and is no longer open to doubt or controversy. Thus, respondent Fajardo, being an emancipation patent holder, has absolute ownership over the subject landholding.

Finally, well-entrenched is the rule that an EP is a title that has the force and effect of a Torrens Title, and as such it is irrevocable and indefeasible, and the duty of the DAR and its instrumentalities like the court, is to see to it that this title is maintained and respected unless challenged in a direct proceeding. Needless to state, a certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein. After the expiration of the one-year period from the issuance of the decree of registration upon which it is based, it becomes incontrovertible.[10]

Vda. de Dela Cruz filed a motion for reconsideration. In its 28 June 2006 Resolution, the DARAB denied the motion. *Vda. de* Dela Cruz appealed to the Court of Appeals.

The Court of Appeals' Ruling

In its 29 August 2008 Decision, the Court of Appeals affirmed the DARAB's 1 March 2006 Decision. The Court of Appeals held that:

The Court notes that the subject matter of the Compromise Agreement between Joaquin Garces and private respondent set forth

[10] *Id.* at 143-144.

in the Decision in said Agrarian Case No. 132 (AF) specifically mentions 0.619 has. as one of the parcels of land transferred to private respondent. This was relied upon by PARAD when he ruled that —

> "After a careful perusal of the aforementioned Decision particularly the Deeds of Transfer under PD 27 enetered into and executed by the petitioner and private respondent, it revealed that the lots allocated to the private respondent consist of 0.4163 ha. and 0.619 or 2.0964 has. While to the petitioner, 2.0354 ha. and 0.0646 ha. or 2.100 has. So the area of 0.619 ha., which is the lot in question is a part and parcel of the lands of the private respondent, being awarded by the DAR thru Operation Land Transfer, which consequently been [sic] covered by TCT EP No. 1879."

Petitioners never raised an issue as to the identity of the land acquired by private respondent. Further, the Court noted that in the cited Decision in Agrarian Case No. 132 (AF), Felicidad *vda. de* De la Cruz and Joaquin Garces likewise executed a Compromise Agreement and the subject matter were parcels of land with total area of 2.180 has. No evidence was presented by petitioners that the subject landholding is embraced within the area covered by the Compromise Agreement of petitioner *vda. de* Dela Cruz with Joaquin Garces.

The Compromise Agreement which was the basis of the Judgment of the Regional Trial Court, was relied in turn by DARAB in ruling that the subject landholding was acquired by private respondent.

When a compromise agreement is given judicial approval, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment.

The bare allegation of petitioner Felicidad *vda. de* Dela Cruz that she occupied a portion of the disputed subject landholding does not prove that she is the rightful and legal farmer-beneficiary of the subject landholding under P.D. No. 27 as supplemented by Letter of Instructions No. 705. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules.

Moreover, it appears that the certification issued by the BARC Chairman Roberto Ramos of Pambuan, Gapan City, dated March 29, 2000, presented by petitioner Felicidad *vda*. Dela Cruz to prove

that she is the tenant of the subject landholding was obtained through fraud and deceit as evidenced by the *Sinumpaang Salaysay* executed by BARC Chairman Roberto Ramos of Pambuan, Gapan City, dated June 29, 2000.[11]

Vda. de Dela Cruz filed a motion for reconsideration. In its 16 October 2008 Resolution, the Court of Appeals denied the motion. Hence, the present petition.

The Issue

Petitioners heirs of *Vda. de* Dela Cruz raise as issue that Emancipation Patent No. A-051521-H was erroneously issued to Fajardo because *Vda. de* Dela Cruz, not Fajardo, was the actual tenant and possessor of the 619-square meter parcel of land covered by the emancipation patent.

The Court's Ruling

The petition is unmeritorious.

First, questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Section 1 of Rule 45 states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth." In *Pagsibigan v. People*,[12] the Court held that:

> A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts.
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> There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.[13]

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[11] *Id.* at 18-19.

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

[13] *Id.* at 256.

Whether *Vda. de* Dela Cruz, not Fajardo, was the actual tenant and possessor of the 619-square meter parcel of land covered by Emancipation Patent No. A-051521-H is a question of fact. Thus, it is not reviewable.

The factual findings of quasi-judicial agencies, especially when affirmed by the Court of Appeals, are binding on the Court. In *Gandara Mill Supply v. NLRC*,[14] the Court held that, "In a long line of cases, the Court has consistently ruled that findings of fact by quasi-judicial agencies x x x are conclusive upon the court in the absence of proof of grave error in the appreciation of facts."[15]

The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculation; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the facts set forth by the petitioner are not disputed by the respondent; and (9) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[16] The heirs of *Vda. de* Dela Cruz fail to convince the Court that any of these circumstances is present.

Second, the RTC's 28 August 2000 Decision has long become final and executory, thus, it can no longer be disturbed. *Vda. de* Dela Cruz entered into a compromise agreement with the heirs of Garces. There is no question that under the compromise agreement, the 619-square meter parcel of land covered by Emancipation Patent No. A-051521-H was given to Fajardo.

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[14] 360 Phil. 871 (1998).

[15] *Id.* at 877.

[16] *Supra* note 12 at 257.

The RTC approved the compromise agreement. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, finding these "Transfers under PD No. 27" not contrary to law, morals, public order or policy and, further, the same having the approval of the defendant Land Bank and the defendant DAR, the foregoing compromise agreement, otherwise called "Deed of Transfer under P.D. No. 27," are hereby APPROVED, and judgment is hereby rendered in accordance with the terms and conditions thereof.
>
> The parties are hereby enjoined to comply strictly and in good faith with all the terms set forth in the aforesaid "Compromise Agreement."
>
> SO ORDERED.[17]

In *Inaldo v. Balagot*,[18] the Court held that:

> A compromise agreement is final and executory. Such a final and executory judgment cannot be modified or amended. If an amendment is to be made, it may consist only of supplying an omission, or striking out a superfluity or interpreting an ambiguous phrase therein in relation to the body of the decision which gives it life.[19]

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 29 August 2008 Decision and 16 October 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 95554.

SO ORDERED.

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

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[17] *Rollo,* pp. 133-134.

[18] G.R. No. 57256, 18 November 1991, 203 SCRA 650.

[19] *Id.* at 654.

SECOND DIVISION

[G.R. No. 187720. May 30, 2011]

TRINIDAD ALICER and ADMINISTRATOR OF INTESTATE ESTATE OF HEIRS OF ARTURO ALICER, *petitioners, vs.* **ALBERTO COMPAS, WINEFREDA and AMANDO PINEDA, RURAL BANK OF CARIGARA, INC., and EDGAR SELDA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; EFFECT OF FAILURE TO APPEAR; WHEN DEFAULT ORDER OF THE TRIAL COURT IS DEEMED PROPER; CASE AT BAR. — Under Section 5, Rule 18 of the Rules of Civil Procedure, non-appearance of the defendant at the pre-trial conference allows the plaintiff to present his evidence *ex-parte*, thus: SEC. 5. *Effect of failure to appear*. — The failure of the plaintiff to appear when so required pursuant to the next proceeding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. **A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.** The Court of Appeals, in dismissing the petition for *certiorari* filed by petitioners, found that the trial court furnished both Atty. Lagunzad and Atty. Emata with the order dated 13 March 2003 scheduling the pre-trial on 5 June 2003, the order dated 5 June 2003 resetting the pre-trial to 25 July 2003, and the pre-trial order dated 25 July 2003. If indeed Atty. Emata failed to receive any of these orders, the Court of Appeals stated that such failure could only be attributed to the negligence of Atty. Emata, petitioners' counsel. The Court of Appeals found that Atty. Emata failed to inform the trial court of his change of address, which Atty. Emata did not refute. We agree with the Court of Appeals in sustaining the default order of the trial court. There was no grave abuse of discretion on the part of the trial court in declaring petitioners in default because they failed to appear during the pre-trial conference. The findings of the fact of the Court of Appeals,

specifically that petitioners were served notice of the pre-trial conference, is conclusive upon this Court which is limited to reviewing errors of law. It is not this Court's function to analyze and weigh the evidence all over again.

2. ID.; ID.; ID.; WHEN A PARTY IS DECLARED IN DEFAULT, IT IS NOT A DENIAL OF SUBSTANTIAL JUSTICE; *RATIONALE*. — Petitioners cannot claim that they were denied substantial justice considering that they can still appeal the judgment of the trial court on the main case, which they did. Indeed, as held in *Banco de Oro-EPCI, Inc. v. Tansipek:* It is important to note that a party declared in default — respondent Tansipek in this case — is not barred from appealing from the judgment on the main case, whether or not he had previously filed a Motion to Set Aside Order of Default, and regardless of the result of the latter and the appeals therefrom. However, the appeal should be based on the Decision's being contrary to law or the evidence already presented, and not on the alleged invalidity of the default order. In this case, it appears that while the issue of the propriety of the default order was still pending in the Court of Appeals, the trial court rendered a decision on 27 November 2006 in Civil Case No. 97-11-203 and petitioners then filed their Notice of Appeal.

APPEARANCES OF COUNSEL

Emata Tamondong & Magkawas Law Offices for petitioners.

Office of the General Counsel (BSP) for Edgar Selda.

Jesus P. Amparo for Alberto Campos.

Office of the General Counsel (PDIC) for Rural Bank of Carigara, Inc.

Wilfredo M. Garrido, Jr. for Sps. Winefreda and Amando Pineda.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 29 May 2007 Decision[2] and the 17 April 2009 Resolution[3] of the Court of Appeals in CA-G.R. CEBU-SP No. 00920. The Court of Appeals upheld the default order dated 25 July 2003 of the Regional Trial Court, Branch 9, Tacloban City (trial court) in Civil Case No. 97-11-203 for Reconveyance of Title with Damages and the trial court's succeeding orders dated 23 February 2005 and 12 May 2005 denying the motion to lift order of default and motion for reconsideration, respectively.

The Facts

The facts as found by the Court of Appeals are as follows:

The instant petition stems from the complaint filed by Alberto Compas against Winefreda Pineda and Amando Pineda, Trinidad Alicer and Heirs of Arturo Alicer, Edgar Selda and the Rural Bank of Carigara (Leyte) docketed before the Regional Trial Court, Branch 9, Tacloban City as Civil Case No. 97-11-203 for Reconveyance of Title and Damages.

After all the answers have been filed and preliminary matters disposed of, the court *a quo* on December 10, 2002 set the pre-trial

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 47-55. Penned by Associate Justice Agustin S. Dizon, with Associate Justices Arsenio J. Magpale and Francisco P. Acosta, concurring. In dismissing the petition for *certiorari*, the dispositive portion of the 29 May 2007 Decision of the Court of Appeals erroneously states that the "Resolutions dated June 25, 2004 and July 27, 2005 are AFFIRMED." Nowhere in the Decision was there a mention of said Resolutions. Based on the Decision itself, the dispositive portion should have stated that the Orders dated 25 July 2003, 23 February 2005 and 12 May 2005 of the Regional Trial Court, Branch 9, Tacloban City in Civil Case No. 97-11-203 are affirmed.

[3] *Id.* at 57-63.

conference on February 20, 2003 which was rescheduled to March 13-14, 2003 upon motion of defendant Rural Bank of Carigara (Leyte) per Order dated January 29, 2003.

However, prior to the March 13-14, 2003 pre-trial conference, counsel for the plaintiff Alberto Compas moved for the postponement of the hearings to March 20-21, 2003 on the ground of prior commitment.

Likewise on the same ground, defendants Trinidad Alicer and Administrator of Intestate Estate of the deceased Arturo Alicer through counsel moved for postponement of the suggested March 20 and 21, 2003 hearing dates to May 8, 2003.

It appears that both motions for postponement did not reach the trial court on time hence the case was still called for hearing on March 13, 2003. On the said date only the following parties were in attendance: Edgar Selda and his counsel Atty. Alexander Ang, Rural Bank of Carigara (Leyte) and its counsel Atty. Nilo Aldrin Lucinario and Trinidad Alicer and one of her counsels Atty. Samuel Lagunzad. Incidentally, the pre-trial conference was rescheduled to June 5, 2003 which was once more reset to July 25, 2003.

When the case was called for pre-trial on July 25, 2003, all parties were present except for defendants Trinidad Alicer and the heirs of Arturo Alicer and their counsel/s. Upon motion of counsel for the plaintiff, said defendants were declared in default by the court *a quo*. Afterward, pre-trial proceeded and after which a pre-trial order was issued by the trial court of even date. Thereafter, trial of the case ensued.

On August 13, 2004, defendants Trinidad Alicer and the Heirs of Arturo Alicer filed a "Motion to Lift Default Order dated July 25, 2003" alleging *inter alia* that they did not receive a notice of the pre-trial scheduled on July 25, 2003, which motion was denied by the trial court on February 23, 2005 for insufficiency in form and substance of the motion and for not being accompanied by an affidavit of merit. A motion for reconsideration thereon was also denied on May 12, 2005, hence the instant petition for *certiorari*.[4]

Petitioners filed with the Court of Appeals a petition for *certiorari*, alleging that they did not receive a resolution from

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

the trial court denying or granting their motion for postponement[5] dated 8 March 2003, requesting that the pre-trial conference be moved to 8 May 2003. Furthermore, they asserted that they were also not served a copy of the notice setting the pre-trial conference on 25 July 2003 and that such notice should have been served on Atty. Melencio Emata (Atty. Emata) and not on co-counsel Atty. Samuel Lagunzad (Atty. Lagunzad).

The Ruling of the Court of Appeals

The Court of Appeals dismissed the petition, finding no grave abuse of discretion on the part of the trial court. The Court of Appeals stressed that it should never be presumed that a motion for postponement would be granted. Petitioners' counsel should have been put on guard when they received no action from the trial court regarding their motion.

On the alleged lack of notice of the pre-trial conference, the Court of Appeals found that the notice and a copy of the pre-trial order were actually sent to Atty. Lagunzad, one of the counsels of petitioner Trinidad Alicer. Contrary to petitioners' claim that Atty. Emata is the sole counsel of record for petitioners, the records reveal that petitioner Trinidad Alicer is actually represented by three counsels, namely, Atty. Emata, Atty. Lagunzad, and Atty. Von Kaiser Soro, who separately appeared in court on different dates and filed pleadings on behalf of petitioner Trinidad Alicer. Citing Section 2, Rule 13 of the Revised Rules of Court, the Court of Appeals held that if a party is represented by several counsels, service of pleadings, judgments and other papers may be made on any of them and that notice to one of the counsels is equivalent to notice to all.

With regard to petitioner heirs of Arturo Alicer, the Court of Appeals found that the trial court furnished both Atty. Lagunzad and Atty. Emata with the order dated 13 March 2003 scheduling the pre-trial on 5 June 2003, the order dated 5 June 2003 resetting the pre-trial to 25 July 2003 and the pre-trial order dated 25 July 2003. The Court of Appeals held that notice sent to Atty.

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[5] *Id.* at 115-117.

Emata is deemed service of notice to the heirs of Arturo Alicer. If Atty. Emata failed to receive the notice, it was because of his negligence in informing the trial court of his change of address. As explained by the Court of Appeals:

> Undeniably, due service of such orders were sent to Atty. Melecio Emata. It is legal presumption, born of wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been and will be duly and properly performed. It has also been held that "when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. Accordingly, notice sent to Atty. Melecio Emata is deemed service of notice to the heirs of Arturo Alicer.
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> At this juncture, it is not amiss to highlight Atty. Melecio Emata's use of various office addresses which according to private respondent Alberto Compas, generated bewilderment as to said counsel's exact and official address. We take cognizance of private respondent Alberto Compas' declaration that in the Answer to the "Amended [Amended] Complaint" dated September 10, 2001 filed by Atty, Emata for and on behalf of petitioners, he supplied the following address: Ground Floor, Door B, Lagasca Apartments, 8259 Constancia Street, Makati City. Thereafter, said counsel sometime in the middle of 2001 used another address, to wit: Rm. 416 Margarita Bldg., J. Rizal Ave., Cor. Cardona, Makati City. In the answer to the "Amended Complaint" dated September 25, 2002 filed by Atty. Emata for and on behalf of the Administrator of the Instestate Estate of Arturo Alicer and the Heirs of Arturo Alicer the address given this time is Constancia Street, Makati City. We note however that in the Order dated January 29, 2003 the address of Atty. Emata as appearing therein is the Cardona, Makati City address which is likewise the same address provided by private respondent Compas in his "Motion to Transfer Hearing" dated February 10, 2003. But in the contentious "Motion for Postponement" dated March 8, 2003 in response to the "Motion to Transfer Hearing" of private respondent Compas, Atty. Emata once more utilized the Constancia Street, Makati City address. Finally, in the "Motion to Lift Default Order" dated July 25, 2003, Atty. Melecio Emata gave a third address, that is, FH Center, LDS Chapel Compound, Dela Costa cor. Solaiman Streets, Salcedo Village, Makati which address is currently being used.

Evidently, Atty. Emata's employing simultaneous and different addresses has muddled the service of pleadings and court notices and orders. It is elementary that it is a counsel's duty to make of record in the court his address and notify the court of any change thereof. The fact that counsel used a different address in later pleadings does not constitute the notice required for indicating his change of address. Jurisprudence teaches that when a party is represented by counsel, notice should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.[6]

The Court of Appeals likewise denied petitioners' motion for reconsideration, thus:

In the instant case, it is an admitted fact that petitioners' counsel, Atty. Emata, failed to notify the lower court of his change of address in violation of Rule 7, Sec. 3 (par. 3) of the 1997 Rules of Court. Atty. Emata claims that his failure to notify the lower court of his change of address was because of his elevated blood pressure and cerebral blood clot that he sustained which made him not intellectually functional to prepare the notice.

However, the Court finds the same lacking credibility considering that he was able to file a number of pleadings and motions for the petitioners using his new address. Why he did not endeavor to include a notice of change of address when he had the chance to do so was inexcusable negligence on his part. Jurisprudence is replete with pronouncements that clients are bound by the actions of their counsel in the conduct of their case. Counsel's omission was an inexcusable neglect binding upon petitioners.

It is not incumbent upon the court to determine the new address of party-litigants. On the contrary, it is the duty of the parties to inform the court of such change of address. Moreover, notices of the court processes are ordinarily taken cared of by clerks who are naturally guided by addresses of record. To require the court and its personnel before sending out the notices to be continuously checking the records and the various addresses from which a counsel may have filed his pleadings and sending them to such addresses instead

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[6] *Id.* at 52-54.

of his address of record is to sow confusion and add an intolerable burden which is not permitted by the Rules of Court.[7]

Hence, this petition.

The Issue

The sole issue for resolution is whether the Court of Appeals erred in affirming the order of the trial court declaring petitioners in default.

The Ruling of the Court

The petition has no merit.

In this case, the trial court declared petitioners in default for failing to attend the pre-trial conference. Under Section 5, Rule 18 of the Rules of Civil Procedure, non-appearance of the defendant at the pre-trial conference allows the plaintiff to present his evidence *ex parte*, thus:

> SEC. 5. *Effect of failure to appear.* — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. **A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof**. (Emphasis supplied)

The Court of Appeals, in dismissing the petition for *certiorari* filed by petitioners, found that the trial court furnished both Atty. Lagunzad and Atty. Emata with the order dated 13 March 2003 scheduling the pre-trial on 5 June 2003, the order dated 5 June 2003 resetting the pre-trial to 25 July 2003, and the pre-trial order dated 25 July 2003. If indeed Atty. Emata failed to receive any of these orders, the Court of Appeals stated that such failure could only be attributed to the negligence of Atty. Emata, petitioners' counsel. The Court of Appeals found that Atty. Emata failed to inform the trial court of his change of address, which Atty. Emata did not refute.

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[7] *Id.* at 61-62.

We agree with the Court of Appeals in sustaining the default order of the trial court. There was no grave abuse of discretion on the part of the trial court in declaring petitioners in default because they failed to appear during the pre-trial conference. The findings of fact of the Court of Appeals, specifically that petitioners were served notice of the pre-trial conference, is conclusive upon this Court which is limited to reviewing errors of law.[8] It is not this Court's function to analyze and weigh the evidence all over again.[9]

Besides, petitioners cannot claim that they were denied substantial justice considering that they can still appeal the judgment of the trial court on the main case, which they did. Indeed, as held in *Banco de Oro-EPCI, Inc. v. Tansipek*:[10]

> It is important to note that a party declared in default – respondent Tansipek in this case – is not barred from appealing from the judgment on the main case, whether or not he had previously filed a Motion to Set Aside Order of Default, and regardless of the result of the latter and the appeals therefrom. However, the appeal should be based on the Decision's being contrary to law or the evidence already presented, and not on the alleged invalidity of the default order.[11]

In this case, it appears that while the issue of the propriety of the default order was still pending in the Court of Appeals, the trial court rendered a decision on 27 November 2006 in Civil Case No. 97-11-203 and petitioners then filed their Notice of Appeal.[12]

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[8] Questions of fact are not reviewable in a petition for review under Rule 45 which specifically states in Section 1 thereof that the petition shall raise only questions of law.

[9] *Development Bank of the Philippines v. Traders Royal Bank*, G.R. No. 171982, 18 August 2010, 628 SCRA 404.

[10] G.R. No. 181235, 22 July 2009, 593 SCRA 456.

[11] *Id.* at 467.

[12] See Comment of respondent Rural Bank of Carigara, Inc., pp. 17-20; *rollo*, pp. 148-151. In their petition dated 22 June 2009, petitioners also mentioned the Decision dated 27 November 2006 of the trial court; *rollo*, p. 38.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 29 May 2007 Decision and the 17 April 2009 Resolution of the Court of Appeals in CA-G.R. CEBU-SP No. 00920.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188296. May 30, 2011]

BARANGAY CAPTAIN BEDA TORRECAMPO, *petitioner, vs.* **METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, Diosdado Jose Allado, Administrator, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, Secretary Hermogenes Ebdane,** *respondents.*

SYLLABUS

POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; AN INQUIRY ON ISSUES THAT ARE EXCLUSIVELY WITHIN THE WISDOM OF THE EXECUTIVE BRANCH IS NOT WITHIN THE PROVINCE OF JUDICIAL POWER; APPLICATION IN CASE AT BAR. — Despite the definition of judicial power under Section 1, Article VIII of the Constitution, an inquiry on issues raised by Torrecampo would delve into matters that are exclusively within the wisdom of the Executive branch. x x x The determination of where, as between two possible routes, to construct a road extension is obviously not within the province of this Court. Such determination belongs to the Executive branch. Moreover, in this case the DPWH still has to conduct the proper study to determine whether a road can be safely constructed on land beneath which runs the aqueducts. Without

such study, the MWSS, which owns the land, cannot decide whether to allow the DPWH to construct the road. Absent such DPWH study and MWSS decision, no grave abuse of discretion amounting to lack of jurisdiction can be alleged against or attributed to respondents warranting the exercise of this Court's extraordinary *certiorari* power.

APPEARANCES OF COUNSEL

Alfredo L. Villamor, Jr. for petitioner.
The Solicitor General for Sec. Hermogenes Ebdane.
Office of the Government Corporate Counsel for MWSS.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 188296 is a petition for injunction[1] with prayer for issuance of a Temporary Restraining Order and Writ of Preliminary Injunction. *Barangay* Captain Beda Torrecampo (Torrecampo) of *Barangay Matandang Balara*, Quezon City, in his capacity as taxpayer and on behalf of his *barangay* constituents and eight million Metro Manila residents, filed the present petition against respondents Manila Waterworks and Sewerage System (MWSS) and Diosdado Jose M. Allado (Allado) in his official capacity as Administrator, and the Department of Public Works and Highways (DPWH) and Hermogenes Ebdane (Ebdane) in his official capacity as Secretary. Torrecampo sought to enjoin respondents from implementing the Circumferential Road 5 (C-5) Extension Project over Lot Nos. 42-B-2-A, 42-A-6 and 42-A-4 (subject lots),[2] all of which are owned by the MWSS. The C-5

[1] Pursuant to Republic Act No. 8975 (R.A. 8975), An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes.

[2] Lot Nos. 42-B-2-A, 42-A-6 and 42-A-4 are also referred to as the "Tandang Sora section" in various submissions to the present case. In paragraph 8 under

Road Extension Project will connect the South Luzon Expressway (SLEX) to the North Luzon Expressway (NLEX).

The Facts

In his petition,[3] Torrecampo narrated that his constituents approached him on 30 June 2009 to report that personnel and heavy equipment from the DPWH entered a portion of *Barangay Matandang Balara* to implement the C-5 Road Extension Project over Lot Nos. 42-A-4, 42-A-6 and 42-A-4.[4] Torrecampo alleged that if the MWSS and the DPWH are allowed to continue and complete the C-5 Road Extension Project within *Barangay Matandang Balara*, three aqueducts of the MWSS which supply water to eight million Metro Manila residents will be put at great risk. Torrecampo insisted that the RIPADA area, consisting of Pook Ricarte, Pook Polaris and Pook Dagohoy, located in *Barangay* University of the Philippines (UP), Diliman, Quezon City, is a better alternative to subject lots.

Torrecampo filed the present petition on 1 July 2009, the very next day after the DPWH's entry. We considered the allegations and the issues in the petition and required respondents to comment thereon. We also issued a status quo order, effective from 1 July 2009 and continuing until further orders. We set the urgent application for *ex-parte* temporary restraining order and/or writ of preliminary injunction for hearing on 6 July 2009.[5]

Statement of Relevant Facts of his petition, Torrecampo specified Lot Nos. "42-A-4, 42-A-6 and 42-A-4" as the portions of *Barangay Matandang Balara* entered into by the DPWH. However, in paragraph 1 under Prayer of his petition, Torrecampo asked that respondents be restrained from implementing the C-5 Road Extension Project over "Lot Nos. 42-B-2-A, 42-A-6, [and] 42-A-24." *Rollo,* pp. 14, 18.

[3] *Rollo,* pp. 3-20.

[4] See note 2.

[5] The following appeared for the parties during the 6 July 2009 hearing:

(a) Atty. Alfredo L. Villamor, Jr. as counsel for Torrecampo;
(b) Atty. Alberto C. Agra and Atty. Ma. Victoria Sardillo of the Office of the Government Corporate Counsel (OGCC) for MWSS and Allado; and
(c) Asst. Solicitor General Eric Remegio Panga, Asst. Solicitor General Bernard Hernandez, Senior State Solicitor Nyriam Susan Hernandez,

Pertinent portions of the resolution which summarized the hearing read:

Atty. Alfredo L. Villamor, Jr. avers that the instant petition for injunction seeks to enjoin the implementation of the DPWH C-5 Road Extension Project to connect the South Luzon Expressway (SLEX) to the North Luzon Expressway (NLEX), alleging that the project would result to grave injustice and irreparable injury to petitioner and the eight million residents of Metro Manila considering that the impending DPWH road project includes the portion known as "Tandang Sora Section" located within petitioner's *barangay*, underneath which are the aqueducts supplying water to eight million residents of Metro Manila, which aqueducts might be damaged and thus imperil and disrupt water supply to all Metro Manila residents; that the petition raises the fundamental right to health under Sec. 15, Art. II of the 1987 Constitution; and that this petition for injunction has to be filed directly with the Supreme Court rather than with the lower court, pursuant to Section 3 of R.A. 8975 "An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations."

Assistant Solicitor General Eric Remegio Panga, lead counsel for respondent DPWH, asserts among others, that petitioner's case does not fall within the exception cited in R.A. 8975 and that under the principle of hierarchy of courts, the petition should have been filed with the Regional Trial Court. Said counsel likewise clarified that the proposed C-5 Road Expansion Project shall not be undertaken pending completion by the DPWH of studies and tests on the safety concerns, including the determination of the existence and actual location of the aqueducts in the area.

Atty. Alberto C. Agra for respondent MWSS finds as premature the filing of the petition for injunction as there is yet no road expansion project to be implemented; that the project as conceived has yet to pass prior review by the MWSS after submission by the DPWH of a detailed study as to actual engineering design and actual tests for the conduct of any construction work; that the entry of DPWH in

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State Solicitor Walter Junia, Associate Solicitor Victor Nicasio Torres and Associate Solicitor Karla Moraleda for DPWH and Ebdane.

the area is to conduct study on the soil and on the location of the aqueducts; and that under the premises, there is yet no justiciable controversy as alleged by petitioner.[6]

After the respective counsels presented their arguments and answered queries from the members of the Court, we resolved to require all parties to submit their memoranda within ten days from the hearing. We also deliberated on the prayer for a temporary restraining order, and resolved to lift the status quo order of 1 July 2009 considering that no grave injustice or irreparable injury would arise.

In their memorandum,[7] the MWSS and Allado, through the OGCC, explained the purpose of the MWSS and its participation in the C-5 Road Extension Project. Under Republic Act No. 6234 (the MWSS Charter), the MWSS owns and has jurisdiction, supervision and control over all waterworks and sewerage systems within the development path of the expanding Metro Manila area, Rizal province, and a portion of Cavite province.[8] The MWSS installed three sub-terrain aqueducts that connect raw water from the La Mesa Dam to the Balara Filtration Plant located in *Barangay Matandang Balara*, Diliman, Quezon City. Portions of these aqueducts are located underneath Commonwealth Avenue in Quezon City, and are buried in varying depths because of the uneven surface of Quezon City's landscape.

Presidential Proclamation No. 1395 (PP 1395), issued by then President Gloria Macapagal-Arroyo on 25 September 2007, declared and reserved certain parcels of land of the RIPADA area for two purposes:

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[6] *Rollo*, pp. 56-57.

[7] *Id.* at 123-181.

[8] Section 2(c) of the MWSS Charter enumerated the following areas: the cities of Manila, Pasay, Quezon, Cavite and Caloocan and the municipalities of Antipolo, Cainta, Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Montalban, Navotas, Parañaque, Pasig, Pateros, San Juan, San Mateo, Taguig, Taytay, all of Rizal Province, the municipalities of Bacoor, Imus, Kawit, Noveleta, Rosario, all of Cavite province and Valenzuela, Bulacan.

1. As an access highway for the new road alignment of the C-5 [Road] Extension Project that will connect the NLEX and SLEX with an area of THIRTY SEVEN THOUSAND EIGHT HUNDRED TWENTY (37,820) SQUARE METERS, more or less.

2. As housing facilities for deserving and bonafide occupants, to include those active and retired UP employees presently residing in the said communities with an area of FORTY SIX THOUSAND FIVE HUNDRED SIXTY THREE (46,563) SQUARE METERS, more or less.[9]

The land reserved by PP 1395 has a total area of 84,383 square meters, and is bounded by University Valley Subdivision on the North, Katipunan Avenue on the South, Tandang Sora Avenue on the East, and Dagohoy Street on the West. Lot 42-C-8-B has an area of 37,820 square meters, while Lot 42-C-8-C has an area of 46,563 square meters. PP 1395 directed the Metropolitan Manila Development Authority (MMDA), under the direct supervision of the Office of the President, to coordinate with DPWH for detailed engineering plans and designs for the access highway as well as with the Land Registration Authority and Land Management Bureau of the Department of Environment and Natural Resources for a comprehensive development plan for housing facilities for the affected families in the areas.[10] At

[9] *Rollo*, p. 32.

[10] This portion of PP 1395 reads:

Specifically, the METROPOLITAN MANILA DEVELOPMENT AUTHORITY, pursuant to its mandated functions on transport and traffic management, and the development of shelter and housing facilities among others, in the delivery of metro-wide services as specified in Items (b) and (e) of R.A. 7924, and being the Regional Development Council in NCR per Executive Order 113, is hereby tasked to perform and execute the following activities under the direct supervision of the OFFICE OF THE PRESIDENT, to ensure the effective and efficient implementation of this Proclamation, stated to wit:

1. Preparation of Detailed Engineering Plans and Designs for the construction of the access highway for the new road alignment of the C-5 Extension Project in coordination with the Department of Public Works and Highways (DPWH).

2. Preparation of a Comprehensive Development Plan for housing facilities for the affected families of the areas. MMDA is authorized to tap and solicit the assistance and support services of concerned government

the time of issuance of PP 1395, MWSS did not have any participation in the C-5 Extension Project.

On 3 December 2007, then MMDA Chairperson Bayani F. Fernando (Chairperson Fernando) wrote to then MWSS Administrator Lorenzo H. Jamora and proposed the utilization of certain MWSS properties for constructing Medium Rise Buildings (MRBs) for the affected families who will be displaced by the C-5 Road Extension Project.[11]

The Board of Trustees of the MWSS, in a meeting held on 19 June 2008, resolved to uphold the position of the MWSS management that the MWSS could not accede to Chairperson Fernando's request. Portions of Resolution No. 2008-120 read:

> WHEREAS, Lot 42-B-2-A consisting of 9,018.20 square meters, more or less, is one of the operational facilities turned over to [Manila Water Company, Inc.] MWCI. Three (3) main aqueducts [two-1575 mm. diameter Reinforced Concrete Pipes — AQ1 and AQ2 (constructed in 1928 and 1955, respectively), and one 2010 mm. Reinforced Concrete Pipe, Hexagonal] conveying raw water from La Mesa Dam to Balara Treatment Plants are located underneath the subject area. The 60-meter wide ROW was designed to provide enough space for the rehabilitation, upgrading, and maintenance of the aqueducts which have been in existence for more than 50 years, and maintenance thereof has to be undertaken to ensure sustainability of water supply. The area should also be insulated from disruptions and disturbances such as increased traffic, construction activities, and heavy loadings, as the subject areas were not technically designed to withstand such dynamic activities.

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agencies to implement the total development of the areas, including the conduct of parcellary and topographic surveys in coordination with the Land Registration Authority and Land Management Bureau, DENR.

3. Formulation, adoption and implementation of guidelines, rules and regulations pertaining to land disposition such as qualifications of beneficiaries, lot pricing, financing scheme, awarding of lots and facilities, required financial plans, and other related procedures.

4. Any and all proceeds to be generated from the land disposition shall accrue and be utilized for the development and general welfare of the community and of the University of the Philippines.

[11] *Rollo*, p. 183.

Technically, the integrity of the pipes underneath is compromised in cases of heavy loadings;

WHEREAS, Lot 42-A-6 consisting of an area of 2,026.50 square meters, more or less, is an extension of the above-mentioned property and for the same reasons, the same should remain free from disruptions and disturbances;

WHEREAS, Lot 42-A-3 with an area of 15,647.60 square meters, more or less, located in front of MWSS complex is now developed as part of the C-5 road extension project;

WHEREAS, Lot 42-A-4 with an area of 47,655.70 square meters, more or less, is an extension of the C-5 road extension project;

WHEREAS, that parcel of land from the aggregate Lot 2 as shown in subdivision Plan PCS-8245 covered by TCT No. 80123 consisting of 8,414.71 square meters, more or less, is located within the MWSS Balara Complex and serves as a buffer zone of the chlorine house and other water facilities comprising the Balara Treatment Plant No. 1.

x x x x x x x x x

WHEREFORE, on motion made by Trustee Reyes and duly seconded by Trustee Dumlao, BE IT RESOLVED, as it is hereby resolved, to UPHOLD the position of Management that it cannot accede to the segregation of the aforementioned parcels of land of the MWSS in Barangay Balara, Quezon City for the housing program of families affected by the C-5 Road Extension Project (NLEX-SLEX Connection). The aqueduct [Right-of-Way] ROW must be retained/ exclusively used for the proposed rehabilitation/upgrading works of the three (3) aqueducts by MWCI programmed from 2008 and beyond given the fact that the ages or economic life of the same are nearly reached and/or future improvements considering the increase of population of Metro Manila.[12]

Between 3 December 2007 and 20 June 2008, there were correspondences between Atty. Rowena Turingan-Sanchez (Atty. Turingan-Sanchez), Director IV of the Office of the President and Administrator Allado of the MWSS;[13] between MMDA

[12] *Id.* at 184-186.

[13] *Id.* at 22-23, dated 20 June 2008; *id.* at 187, dated 28 April 2008.

Chairperson Fernando and Executive Secretary Eduardo Ermita (Exec. Sec. Ermita);[14] between Leonor C. Cleofas, Deputy Administrator of the MWSS' Operations Department, and Vicente Elefante, Manager of the Property Management Department of the MWSS;[15] and between the Board of Directors of the MWSS and the Chairperson of the MMDA on one hand, and Exec. Sec. Ermita on the other.[16] All these correspondences referred to the segregation of MWSS-owned lots for the construction of MRBs for those affected by the C-5 Road Extension Project.

On 12 March 2009, MWSS issued Board Resolution No. 2009-052 and allowed DPWH to use the 60 Meter Right-of-Way for preliminary studies in the implementation of the C-5 Road Extension Project. The Resolution reads:

> Subject to the prior review by Management of the road construction design and the opinion of the OGCC approving the use of the right-of-way (ROW), as recommended by Management and the joint Board Committees on Concession, Monitoring and Construction Management, RESOLVED, as it is hereby resolved, to allow the use by the Department of Public Works and Highways of the MWSS Balara-La Mesa aqueduct ROW, including the area of the Capitol Golf Course consisting of 93,941 square meters, for the implementation of the Katipunan/Tandang Sora Segment Circumferential Road 5 Project.[17]

DPWH entered the said properties of the MWSS on 30 June 2009 to conduct the necessary complete study and detailed design of the C-5 Road Extension Project, including test pitting and geothermal profiling.

In their memorandum,[18] DPWH, through the Office of the Solicitor General (OSG), stated that to execute the Magsaysay Avenue — Congressional Avenue segment of the C-5 Road

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[14] *Id.* at 188, dated 22 April 2008.

[15] *Id.* at 193, dated 13 May 2008.

[16] *Id.* at 194-196, dated 26 May 2008.

[17] *Id.* at 251.

[18] *Id.* at 258-300.

Extension Project, the DPWH will follow the direction of the existing Katipunan Avenue — Tandang Sora Avenue road connection. A portion of Tandang Sora road, from Magsaysay Avenue to Damayan Road, will be widened to attain a 30-meter road width, allowing three lanes per direction. The road-widening aspect of the above-mentioned portion of the project affects Lots 42-A-4 and 42-B-2-A of the MWSS. A portion of Lot 42-B-2-A was occupied by the Capitol Hills Golf & Country Club until the early part of July 2009, when the MWSS allowed DPWH's entry pursuant to Board Resolution No. 2009-052.

The Issues

Torrecampo raises only one issue: Whether respondents should be enjoined from commencing with and implementing the C-5 Road Extension Project along Tandang Sora Road, affecting MWSS' properties. Torrecampo argues that (1) he has the legal standing to file the present suit; (2) only the Supreme Court may issue a restraining order and/or writ of preliminary injunction against government projects, according to the exception in Section 3 of R.A. 8975; (3) the present suit is not premature; and (4) the implementation of the C-5 Road Extension Project violates and defeats the purpose of R.A. 8975 unless it is enjoined.

The MWSS seeks the dismissal of Torrecampo's petition on the following grounds: (1) the petition does not present a justiciable matter that requires the Court to exercise its power of judicial review; (2) the petition failed to allege Torrecampo's right that warrants the issuance of an injunction under R.A. 8975; and (3) Torrecampo failed to exhaust administrative remedies.

The DPWH also limits the issue to Torrecampo's entitlement to an injunctive writ. The DPWH argues that: (1) Torrecampo violated the doctrine of hierarchy of courts; (2) MWSS did not object to DPWH's proposed project on the alleged ground that the project would destroy the aqueducts; (3) there is no credible proof that the project is implemented in the RIPADA area; (4) the alignment in the RIPADA area is more difficult to undertake compared to the DPWH alignment; (5) the petition cannot be a valid class suit because Torrecampo failed to show proof that he represents the interest of eight million residents

of Metro Manila; (6) the petition is not a valid taxpayer's suit as there is yet no project to speak of; (7) the DPWH's determination of the location of the project in accordance with its specialized skills and technical expertise should be accorded with finality and respect; (8) Torrecampo is not entitled to the issuance of an injunctive writ; and (9) Torrecampo has no cause of action.

The Court's Ruling

The petition must fail. Torrecampo is not entitled to an injunction. Torrecampo seeks judicial review of a question of Executive policy, a matter outside this Court's jurisdiction. Torrecampo failed to show that respondents committed grave abuse of discretion that would warrant the exercise of this Court's extraordinary *certiorari* power.

Judicial Review of a Question of Executive Policy

At the outset, we declare that Torrecampo seeks judicial review of a question of Executive policy, and quotes the Constitution as a thin veil for his weak arguments.

Torrecampo asserts that "[t]he right of the eight million residents of Metro Manila to clean and potable water is greatly put at risk x x x"[19] and alleges that the MWSS and the DPWH violate Section 16, Article II[20] and Section 6, Article XII[21] of the Constitution should they choose to proceed with the C-5 Road Extension Project using MWSS' properties instead of the RIPADA area. These issues, however, are "dependent upon the wisdom, not legality, of a particular measure."[22] Under the guise of the relative

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[19] *Id.* at 16.

[20] The State shall protect the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

[21] The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

[22] *Tañada and Macapagal v. Cuenco*, 103 Phil. 1051, 1067 (1957). In summarizing the definition of the term, "political question," Justice Concepcion wrote: "In short, the term 'political question' connotes, in legal parlance, what

importance of the rights of a lesser number of motorists to a wider road *vis-a-vis* the rights of some eight million residents of Metro Manila to clean and potable water, **Torrecampo wants this Court to determine whether the Tandang Sora area is a better alternative to the RIPADA area for the C-5 Road Extension Project**.

Despite the definition of judicial power under Section 1, Article VIII of the Constitution,[23] an inquiry on issues raised by Torrecampo would delve into matters that are exclusively within the wisdom of the Executive branch. The possibility of judicial interference, as well as the speculative nature of the present petition, was clearly shown during the oral arguments:

JUSTICE CARPIO:
Ok, so, is it the province of this Court to tell the DPWH that [it] should construct the road not in the Ripada area but here in the Tandang Sora area. Do we have that jurisdiction?

Atty. Villamor:[24]
No, Your Honor. Maybe what your jurisdiction is to stop or enjoin the DPWH from constructing the DPWH and the Honorable Court need not direct it, or not direct the DPWH to instead construct the Ripada area because it is already an ongoing concern Your Honor.

JUSTICE CARPIO:
Is that our duty or that's the duty of the President to tell the DPWH Secretary, don't waste our money, we have already the road on this Ripada side . . .

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it means in ordinary parlance, namely, a question of policy. In other words, in the language of *Corpus Juris Secundum*, it refers to 'those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government.' It is concerned with issues dependent upon the *wisdom*, not legality, of a particular measure." (Italics in the original)

[23] The second paragraph of Section 1, Article VIII of the Constitution reads: "Judicial power includes the duty of the court of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

[24] Counsel for petitioner Torrecampo. See note 5.

Atty. Villamor:
It can be the duty of the President Your Honor, but the petitioner here Your Honor...

JUSTICE CARPIO:
Did you go to the President and ask the President to tell the DPWH Secretary not to waste the taxpayers' money?

Atty. Villamor:
No, the point Your Honor, the petitioner here is a lowly *Barangay* Captain...

JUSTICE CARPIO:
Yes, but you can also go to the President if you think that there is a waste of funds by the DPWH Secretary?

Atty. Villamor:
We did not contemplate of [sic] that possibility Your Honor.

JUSTICE CARPIO:
You should go to the superior first of the Department Secretary, ask the President. We are not the overseer of the President in terms of Executive functions here.

Atty. Villamor:
Yes, but that is wanting. Maybe the Court is trying to say that we should have exhausted...

JUSTICE CARPIO:
Ok, do you know if the plan of DPWH includes fortifications of the aqueducts [so] that x x x the integrity will not suffer if there is a road over it?

Atty. Villamor:
We do not know, Your Honor.

JUSTICE CARPIO:
You do not know?

Atty. Villamor:
Yes, Your Honor.

JUSTICE CARPIO:
So, it could be possible that they included that in their plans?

Atty. Villamor:
Well, Your Honors, as I have said Your Honor, apart from the fact that aqueducts will be put in danger, there is an ongoing Government project, Your Honor.

JUSTICE CARPIO:
So, do you agree with me that it is possible x x x the DPWH did x x x make plans for remedial measures, so it's possible that they in fact made remedial measures?

Atty. Villamor:
Yes, that's possible, Your Honor.

JUSTICE CARPIO:
Ok. You are coming here and you are alleging so many factual issues that hundreds of millions of pesos have already been disbursed?

Atty. Villamor:
Yes, Your Honor.

JUSTICE CARPIO
What are your supporting papers on this?

Atty. Villamor:
The SARO that I have just shown, Your Honor.

JUSTICE CARPIO:
Yes, the SARO doesn't mean actual expenditure, there has to be a contract and the payments must have been made. There are so many SAROs floating around and not a single centavo has been spent.

Atty. Villamor:
I'm not saying by virtue of the SARO, Your Honor, moneys have been spent, what I'm saying is that by virtue of that SARO the project is being implemented and being pushed through by the MMDA, Your Honor.[25]

The OGCC, in its presentation of the case for MWSS during the oral arguments, further explained the nature of DPWH's entry into MWSS' premises:

Atty. Agra:

x x x x x x x x x

[25] TSN, 6 July 2009, pp. 71-76.

MWSS Board of Trustees, mindful of its mandate under its Charter, issued Resolution No. 2009-052 on March 12, 2009. The MWSS Board resolved to allow the use by the Department of Public Works and Highways of the MWSS Balara, La Mesa aqueducts' Right of Way for the implementation of the Katipunan-Tandang Sora segment circumferential road [extension] project. However, as pointed out by counsel, the implementation of the Resolution, is subject to two conditions precedent: (1) prior review by management of MWSS of the road construction design, and (2) opinion from the Office of the Government Corporate Counsel approving the use of the Right of Way. To date, the conditions have not been complied with, simply because no road construction design has been prepared and submitted to the MWSS management for consideration. The objective, therefore, of the entry into the MWSS property last week is two (2) fold. First, the purpose of the entry is to fence off, clear, segregate and secure the property in order that DPWH can conduct the necessary complete study and detailed design of the proposed road extension project. The study includes test pitting and geo-technical profiling. The results of the study will show the condition and location of the aqueducts, the condition and classification of the soil, the requirements to protect the aqueducts, assuming that the detailed design is approved by the MWSS. Second reason, the entry is simply an act of the ownership of the MWSS over its property along Tandang Sora. The lease contract with Capitol Golf expired in 2005. And therefore, with or without the road extension project, the property should be fenced off. In sum, no approval of the road extension project has been made by the MWSS since no study has been submitted to it.

MWSS recognizes the existence of two plans concerning the extension of the C-5. The other plan referred to in the petition as the better alternative is being pursued by the Metropolitan Manila Development Authority. The proposed road shall traverse Pook Ricarte, Pook Polaris and Dagohoy, which is referred to as the Ripada, within the University of the Philippines. An integral part of the project per Proclamation 1395, is the proposed construction of medium-rise buildings within the University of the Philippines. Therefore, Your Honors, under Proclamation 1395, MWSS has no role, there is no aqueduct that would be affected by this proposed project under Proclamation No. 1395. However, in a proposed proclamation which would effectively amend Proclamation No. 1395, the proposed relocation site of the bonafide residents of the University of the Philippines shall be within MWSS property along Tandang Sora. This is the subject of the petition. The letter of Administrator

Diosdado Allado dated June 20, 2008, which is attached to the petition as Annex "B," was written in connection with the proposed proclamation not in connection with Proclamation No. 1395. The proposed proclamation again pertains to the proposed relocation of UP residents within the MWSS property, in connection with the proposed C-5 project being carried out by MMDA. The first paragraph of the letter was conveniently omitted by petitioner in his discussion. Because the first paragraph of the letter puts into context the objections of the MWSS. What petitioner projects is that the objections of the MWSS pertains to the road extension project while in truth and in fact the letter referred, signed by Mr. Allado, the Administrator of the MWSS, refers to the objections not on the the proposed road widening project, but on the proposed housing project. The objections of the MWSS of any disruption or any disturbance on the aqueducts are confined to the proposed construction of medium-rise buildings that will be constructed on top of the aqueducts. Thus, MWSS is not objecting to any proposed extension road project on top of the aqueducts. At this point MWSS cannot object or concur with any road project since no comprehensive study has been made and has been submitted to the MWSS for its approval.

Further, it would be erroneous to automatically assume that any road above the aqueducts would necessarily impair or compromise the integrity of the aqueducts. At present, as pointed out by the Office of the Solicitor General, there are portions of the aqueducts which are under Commonwealth Avenue, Luzon Avenue and Tandang Sora. The aqueducts to this day are intact and serve the water needs of the 8 million residents of Metro Manila.[26]

The determination of where, as between two possible routes, to construct a road extension is obviously not within the province of this Court. Such determination belongs to the Executive branch. Moreover, in this case the DPWH still has to conduct the proper study to determine whether a road can be safely constructed on land beneath which runs the aqueducts. Without such study, the MWSS, which owns the land, cannot decide whether to allow the DPWH to construct the road. Absent such DPWH study and MWSS decision, no grave abuse of discretion amounting to lack of jurisdiction can be alleged against or attributed to respondents

[26] *Id.* at 105-110.

warranting the exercise of this Court's extraordinary *certiorari* power.[27]

Indeed, for the above reason alone, Torrecampo's petition must fail. There is no need to further discuss the other issues raised by the parties.

WHEREFORE, we *DENY* the petition filed by Barangay Captain Beda Torrecampo. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 189847. May 30, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERNESTO MERCADO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; WHEN THE TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH THE MEDICAL FINDINGS, THERE IS SUFFICIENT BASIS TO CONCLUDE THAT THERE HAS BEEN CARNAL KNOWLEDGE. — AAA positively identified the appellant as the person who had raped her on two occasions in 2000 and 2003, respectively. Her testimonies were clear and straightforward; she was consistent in her recollection of the details of her defloration. If the sexual abuses did not happen, we see no plausible reason showing why AAA should testify against her own father, imputing on him the grave crime of rape. AAA's testimony was also corroborated

[27] See note 23.

by Dr. Fe, who found hymenal lacerations on AAA's private part. We have held that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.

2. ID.; ID.; ID.; FINDINGS OF FACTS AND ASSESSMENT OF CREDIBILITY OF WITNESSES ARE MATTERS BEST LEFT TO THE TRIAL COURT; APPLICATION IN CASE AT BAR. — It is settled that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court which had the unique opportunity to observe the demeanor of the witnesses and was in the best position to discern whether they were telling the truth. At any rate, **the date of the commission of the rape is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman.** The discrepancies in the actual dates the rapes took place are not serious errors warranting a reversal of the appellant's conviction. What is decisive in a rape charge is the victim's positive identification of the accused as the malefactor.

3. ID.; ID.; DENIAL; POSITIVE IDENTIFICATION BY THE VICTIM SHOULD PREVAIL OVER THE MERE DENIAL OF THE ACCUSED. — We have consistently held that positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the mere denial of the appellant whose testimony is not substantiated by clear and convincing evidence.

4. CRIMINAL LAW; RAPE; CIVIL LIABILITY; AWARD OF DAMAGES, PROPER. — The award of civil indemnity to the rape victim is mandatory upon a finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. Considering that the death penalty was not imposed due to the prosecution's failure to prove the minority of the victim, we reduce the amounts of civil indemnity and moral damages from ₱75,000.00 to ₱50,000.00, respectively, for each count. We also increase the amount of exemplary damages from ₱25,000.00 to ₱30,000.00 in accordance with current jurisprudence.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BRION, *J.*:

We resolve in this Resolution the appeal from the July 14, 2009 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 03120. The CA affirmed with modification the decision[2] of the Regional Trial Court (*RTC*), Branch 32, Agoo, La Union, finding Ernesto Mercado (*appellant*) guilty beyond reasonable doubt of two (2) counts of rape, and sentencing him to suffer the penalty of *reclusion perpetua* for each count.

AAA[3] is the fifth child of the appellant and BBB. Sometime in 2000, BBB (AAA's mother) and CCC (AAA's sister), went to Ambalite, Pugo, La Union. AAA, her two other siblings, and the appellant, were left in their house at Rosario, La Union. At around 8:00 a.m., and while AAA was doing her school assignment, the appellant entered her room and sat in a corner. Afterwards, the appellant sat beside AAA, kissed her on the right cheek, and removed her shorts and panty. The appellant threatened to kill AAA if she shouted. The appellant then removed

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[1] Penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justice Mariflor P. Punzalan Castillo and Associate Justice Ramon M. Bato, Jr.; *rollo*, pp. 2-16. The dispositive portion reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**, and accordingly, the assailed November 6, 2007 Joint Decision of the trial court convicting appellant Ernesto Dela Paz Mercado of Rape is affirmed. The Joint Decision is hereby modified by increasing the award of indemnity for each conviction of Rape to Php75,000.00, and by ordering Ernesto to pay the sum of Php25,000.00 for each of his convictions by way of exemplary damages.

[2] Penned by Judge Jennifer A. Pilar; CA *rollo*, pp. 17-27.

[3] See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

his shorts and briefs, went on top of AAA, and inserted his penis into her vagina.[4]

AAA also recalled that at around 2:00 p.m. of July 26, 2000, while BBB was at the market and AAA's siblings were at their aunt's house, the appellant again sexually abused her.[5]

Sometime in 2003, AAA and the appellant were cleaning a banana grove when the latter told her to take a rest. AAA did as instructed, and while she was resting, the appellant embraced her and kissed her on the cheek and lips. The appellant removed AAA's clothes and panty, and laid her on the grass. The appellant took off his own shorts and briefs, went on top of AAA, and inserted his penis into her vagina.[6]

According to AAA, the appellant sexually abused her five (5) times from 2000 to 2003.[7]

Dr. Sheila Fe (*Dr. Fe*), a physician at the Rosario District Hospital, conducted a medical examination of AAA on August 3, 2003, and found healed lacerations at 3 and 9 o'clock positions in her private part.[8]

The prosecution charged the appellant with three (3) counts of rape before the RTC.[9] The appellant denied the charges against him, and claimed that his brother was the one who raped AAA.[10]

The RTC found the appellant guilty beyond reasonable doubt of two (2) counts of rape, and sentenced him to suffer the penalty of *reclusion perpetua* for each count. It also ordered him to pay AAA ₱75,000.00 and ₱50,000.00 as moral damages and civil indemnity, respectively, for each count.[11]

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[4] TSN, August 31, 2004, pp. 3-13.

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

[6] *Id.* at 17-20; See also TSN, September 27, 2004, p. 2.

[7] TSN, August 31, 2004, pp. 15-16.

[8] TSN, January 26, 2005, pp. 2-4.

[9] FC Case Nos. A-324-326.

[10] TSN, September 5, 2007, pp. 7-9.

[11] CA *rollo*, pp. 17-27.

The CA, in its decision of July 14, 2009, affirmed the RTC decision with the following modifications: (1) the civil indemnity was increased to ₱75,000.00; and (2) the appellant was further ordered to pay the victim ₱25,000.00 as exemplary damages.[12]

The CA held that AAA positively identified the appellant as the person who had sexually abused her on different occasions. AAA was firm in her narration, and did not waver despite the rigid cross examination by the defense. In addition, the defense failed to impute any ill motive on her part to falsely testify against her father.

The CA also held that AAA's failure to specify the exact dates of the rapes do not detract from her credibility. The CA explained that it is too much to require from a young girl, who had been raped several times, to mechanically recall the exact dates of each rape.[13]

The CA further added that AAA's delay in reporting the rape was due to the appellant's threats on her life.

We resolve to **deny** the appeal for lack of merit, but we **modify** the amount of the awarded indemnities.

AAA positively identified the appellant as the person who had raped her on two occasions in 2000 and 2003, respectively. Her testimonies were clear and straightforward; she was consistent in her recollection of the details of her defloration. If the sexual abuses did not happen, we see no plausible reason showing why AAA should testify against her own father, imputing on him the grave crime of rape.

AAA's testimony was also corroborated by Dr. Fe, who found hymenal lacerations on AAA's private part. We have held that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.[14]

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[12] *Supra* note 1.

[13] *Rollo*, pp. 2-16.

[14] See *People v. Buban*, G.R. No. 166895, January 24, 2007, 512 SCRA 500, 522.

We find AAA's testimony regarding the rape that happened on July 26, 2000, to be deficient; it lacked specific details on how the rape was committed. AAA's statement that she had been "*fucked*" [sic] for the second time by the appellant "in the same house," without nothing more, is insufficient to establish carnal knowledge with moral certainty. Every charge of rape is a separate and distinct crime and each must be proved beyond reasonable doubt.[15] The lower courts were thus correct in convicting the appellant of only two (2) counts of rape.

We find unmeritorious the appellant's argument that AAA's testimony is unreliable due to the inconsistencies in the dates when the rapes were committed.

It is settled that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court which had the unique opportunity to observe the demeanor of the witnesses and was in the best position to discern whether they were telling the truth. At any rate, **the date of the commission of the rape is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman**. The discrepancies in the actual dates the rapes took place are not serious errors warranting a reversal of the appellant's conviction.[16] What is decisive in a rape charge is the victim's positive identification of the accused as the malefactor.[17]

The appellant's denial must also crumble in light of AAA's positive testimony. We have consistently held that positive identification of the accused, when categorical and consistent and without any showing of ill motive of the part of the eyewitness testifying, should prevail over the mere denial of the appellant whose testimony is not substantiated by clear and convincing evidence.[18]

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[15] See *People v. Marahay*, G.R. Nos. 120625-29, January 28, 2003, 396 SCRA 129, 143.

[16] See *People v. Aure*, G.R. No. 180451, October 17, 2008, 569 SCRA 836, 863.

[17] *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 631.

[18] See *People v. Caraang*, G.R. Nos. 148424-27, December 11, 2003, 418 SCRA 321, 349.

We also do not find merit in the appellant's contention that his brother (now deceased) was the one who had raped AAA. The appellant did not present any evidence to substantiate this claim.

The Proper Indemnities

The award of civil indemnity to the rape victim is mandatory upon a finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent.[19]

Considering that the death penalty was not imposed due to the prosecution's failure to prove the minority of the victim, we reduce the amounts of civil indemnity and moral damages from ₱75,000.00 to ₱50,000.00, respectively, for each count.[20]

We also increase the amount of exemplary damages from ₱25,000.00 to ₱30,000.00 in accordance with current jurisprudence.[21]

WHEREFORE, premises considered, we hereby *AFFIRM* the July 14, 2009 decision of the Court of Appeals in CA-G.R. CR-HC No. 03120 with the following *MODIFICATIONS*:

(a) the awards of civil indemnity and moral damages is *REDUCED* from ₱75,000.00 to ₱50,000.00, respectively, for each count; and

(b) exemplary damages is *INCREASED* from ₱25,000.00 to ₱30,000.00 for each count.

Costs against appellant Ernesto Mercado.

SO ORDERED.

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

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[19] *People v. Cañada.* G.R. No. 175317, October 2, 2009, 602 SCRA 378.

[20] See *People v. Flores*, G.R. No. 188315, August 25, 2010; *People v. Lindo*, G.R. No. 189818, August 9, 2010; *People v. Ogan*, G.R. No. 186461, July 5, 2010; and *People v. Cadap*, G.R. No. 190633, July 5, 2010.

[21] See *People v. Malana*, G.R. No. 185716, September 29, 2010.

THIRD DIVISION

[G.R. No. 191427. May 30, 2011]

UNIVERSAL ROBINA CORP. (CORN DIVISION), *petitioner, vs.* **LAGUNA LAKE DEVELOPMENT AUTHORITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; RATIONALE. — The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

2. ID.; ID.; EXECUTIVE ORDER NO. 192 (EO 192); ISSUED FOR THE SALUTARY PURPOSE OF REORGANIZING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES. — Executive Order No. 192 (EO 192) was issued on June 10, 1987 for the salutary purpose of reorganizing the DENR, charging it with the task of promulgating rules and regulations for the control of water, air and land pollution as well as of promulgating ambient and effluent standards for water and air quality including the allowable levels of other pollutants and radiations. EO 192 also created the Pollution Adjudication Board under the Office of the DENR Secretary which took over the powers and functions of the National Pollution Control Commission with respect to the adjudication of pollution cases, including the latter's role as arbitrator for determining reparation, or restitution of the damages and losses resulting from pollution.

3. ID.; BILL OF RIGHTS; DUE PROCESS, DEFINED; ADMINISTRATIVE DUE PROCESS, EXPLAINED. — Due

process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. **The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. . . . Administrative due process cannot be fully equated with due process in its strict judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided.** Here, petitioner URC was given ample opportunities to be heard — it was given show cause orders and allowed to participate in hearing to rebut the allegation against it of discharging pollutive wastewater to the Pasig River, it was given the chance to present evidences in support of its claims, it was notified of the assailed "Order to Pay," and it was allowed to file a motion for reconsideration. Given these, we are of the view that the **minimum requirements of administrative due process have been complied with in this case.**

APPEARANCES OF COUNSEL

Bolos & Reyes-Beltran Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The present petition for review on *certiorari* assails the Court of Appeals Decision[1] dated October 27, 2009 and Resolution dated February 23, 2010 in CA-G. R. SP No. 107449.

[1] Penned by Associate Justice Marlene Gonzales-Sison with the concurrence of Associate Justices Andres B. Reyes, Jr. and Vicente S.E. Veloso, CA *rollo*, pp. 2147-2156.

Universal Robina Corp. (petitioner) is engaged in, among other things, the manufacture of animal feeds at its plant in Bagong Ilog, Pasig City.

Laguna Lake Development Authority (LLDA), respondent, through its Pollution Control Division — Monitoring and Enforcement Section, after conducting on March 14, 2000 a laboratory analysis of petitioner's corn oil refinery plant's wastewater, found that it failed to comply with government standards provided under Department of Environment and Natural Resources (DENR) Administrative Orders (DAOs) Nos. 34 and 35, series of 1990.

LLDA later issued on May 30, 2000 an *Ex-Parte* Order requiring petitioner to explain why no order should be issued for the cessation of its operations due to its discharge of pollutive effluents into the Pasig River and why it was operating without a clearance/permit from the LLDA.

Still later, the LLDA, after receiving a phone-in complaint conducted on August 31, 2000, another analysis of petitioner's wastewater, which showed its continued failure to conform to its effluent standard in terms of Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), Color and Oil/Grease.

Hearings on petitioner's pollution case were thereafter commenced on March 1, 2001.

Despite subsequent compliance monitoring and inspections conducted by the LLDA, petitioner's wastewater failed to conform to the parameters set by the aforementioned DAOs.

In early 2003, petitioner notified LLDA of its plan to upgrade the wastewater treatment facility (WTF) of its corn oil refinery plant in an effort to comply with environmental laws, an upgrade that was completed only in 2007.

On May 9, 2007 on its request,[2] a re-sampling of petitioner's wastewater was conducted which showed that petitioner's plant *finally* complied with government standards.

[2] *Vide* Letter dated March 22, 2007 which was received by the LLDA on April 17, 2007, CA *rollo*, p. 51.

Petitioner soon requested for a reduction of penalties, by Manifestation and Motion[3] filed on August 24, 2007 to which it attached copies of its Daily Operation Reports and Certifications[4] to show that accrued daily penalties should only cover a period of 560 days.

After conducting hearings, the LLDA issued its Order to Pay[5] (OP) dated January 21, 2008, the pertinent portion of which reads:

> After careful evaluation of the case, respondent is found to be discharging pollutive wastewater computed in two periods reckoned from March 14, 2000 — the date of initial sampling until November 3, 2003 — the date it requested for a re-sampling covering 932 days in consideration of the interval of time when subsequent monitoring was conducted after an interval of more than 2 years and from March 15, 2006 — the date when re-sampling was done until April 17, 2007 covering 448 days[6] for **a total of 1,247 days**.
>
> WHEREFORE, premises considered, respondent is hereby ordered to pay within fifteen (15) days from receipt hereof the accumulated daily penalties amounting to a total of Pesos: One Million Two Hundred Forty-Seven (Thousand) Pesos Only (PHP 1,247,000.00) prior to dismissal of the case and without prejudice of filing another case for its subsequent violations. (emphasis and underscoring supplied)

Petitioner moved to reconsider, praying that it be ordered to pay only accumulated daily penalties in the sum of Five Hundred Sixty Thousand (₱560,000) Pesos[7] on grounds that the LLDA erred in *first*, adopting a straight computation of the periods of violation — based on the flawed assumption that petitioner was operating on a daily basis "without excluding, among others,

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[3] *Id.* at 39-42.

[4] Annexes "1" to "23", *id.* at 53-2045.

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

[6] Mistakenly stated as 448 days instead of only 342 days as rectified in the subsequent order denying petitioner's motion for reconsideration, *infra.*

[7] Covering a period of 560 days.

the period during which the LLDA Laboratory underwent rehabilitation work from December 1, 2000 to June 30, 2001 (covering 212 days); and *second*, in disregarding the Daily Operation Reports and Certifications which petitioner submitted to attest to the actual number of its operating days, *i.e.*, 560 days.

By Order[8] of July 11, 2008, the LLDA denied petitioner's motion for reconsideration and reiterated its order to pay the aforestated penalties, disposing of the issues thusly:

> On the *first issue*, while it is true that the Authority failed to state in its OP dated 21 January 2008 the basis for actual computation of the accumulated daily penalties, the Authority would like to explain that its computation was based on the following, to wit:
>
> The computation of accumulated daily penalties was reckoned period [*sic*] from 14 March 2000 — the date of initial sampling to 03 November 2003 — the date when its letter request for re-sampling was received which covers 932 days computed at 6 days per week operation as reflected in the Reports of Inspection. Since subsequent inspection conducted after two (2) years and four (4) months, such period was deducted from the computation. Likewise, the period when the LLDA Laboratory was rehabilitated from December 1, 2000 to June 30, 2001 was also deducted with a total of Two Hundred Twelve (212) days.
>
> On the *second claim*, the same cannot be granted for lack of legal basis since the documents submitted are self-serving. The period from 15 March 2006 to 17 April 2007 was computed from the date of re-sampling when it failed to conform to the standards set by law up to the date of receipt of its letter request for re-sampling prior to its compliance on May 9, 2007. The period covers 342 days.
>
> Hence, respondent is found to be discharging pollutive wastewater not conforming with the standards set by law computed from March 14, 2000 — November 3, 2003 covering 932 days and from March 15, 2006 — April 17, 2007 covering 342 days for a total of 1,274 days.

Petitioner challenged by *certiorari* the twin orders before the Court of Appeals, attributing to LLDA grave abuse of

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[8] *Id.* at 51-53.

discretion in disregarding its documentary evidence, and maintaining that the lack of any plain, speedy or adequate remedy from the enforcement of LLDA's order justified such recourse as an exception to the rule requiring exhaustion of administrative remedies prior to judicial action.

By Decision of October 27, 2009 the appellate court affirmed both LLDA orders, which it found to be amply supported by substantial evidence, the computation of the accumulated daily penalties being in accord with prevailing DENR guidelines. The appellate court held that while petitioner may have offered documentary evidence to support its assertion that the days when it did not operate must be excluded from the computation, the LLDA has the prerogative to disregard the same for being unverified, hence, unreliable.

The appellate court went on to chide petitioner's petition for *certiorari* as premature since the law provides for an appeal from decisions or orders of the LLDA to the DENR Secretary or the Office of the President, a remedy which should have first been exhausted before invoking judicial intervention.[9]

Petitioner's motion for reconsideration having been denied by Resolution of February 23, 2010, it filed the present petition.

Petitioner cites deprivation of due process and lack of any plain, speedy or adequate remedy as grounds which exempted it from complying with the rule on exhaustion of administrative remedies.

The petition fails.

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[10] The rationale for this

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[9] *Vide* note 1 at 2150-2154.

[10] *Caballes v. Perez-Sison*, G.R. No. 131759, March 23, 2004, 426 SCRA 98.

doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[11]

Executive Order No. 192[12] (EO 192) was issued on June 10, 1987 for the salutary purpose of reorganizing the DENR, charging it with the task of promulgating rules and regulations for the control of water, air and land pollution as well as of promulgating ambient and effluent standards for water and air quality including the allowable levels of other pollutants and radiations. EO 192 also created the Pollution Adjudication Board under the Office of the DENR Secretary which took over the powers and functions of the National Pollution Control Commission with respect to the adjudication of pollution cases, including the latter's role as arbitrator for determining reparation, or restitution of the damages and losses resulting from pollution.[13]

Petitioner had thus available administrative remedy of appeal to the DENR Secretary. Its contrary arguments to show that an appeal to the DENR Secretary would be an exercise in futility as the latter merely adopts the LLDA's findings is at best, speculative and presumptuous.

As for petitioner's invocation of due process, it fails too. The appellate court thus aptly brushed aside this claim, in this wise:

> Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity

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[11] *Estrada v. Court of Appeals*, G.R. No. 137862, November 11, 2004, 442 SCRA 117.

[12] Providing for the Reorganization of the Department of Environment, Energy and Natural Resources Renaming It As the Department of Environment and Natural Resources, And For Other Purposes.

[13] *The Alexandria Condominium Corporation v. Laguna Lake Development Authority*, G.R. No. 169228, September 11, 2009.

for the person so charged to answer the accusations against him constitute the minimum requirements of due process. **The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of**.

. . . **Administrative due process cannot be fully equated with due process in its strict judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided.**

Here, petitioner URC was given ample opportunities to be heard — it was given show cause orders and allowed to participate in hearing to rebut the allegation against it of discharging pollutive wastewater to the Pasig River, it was given the chance to present evidences in support of its claims, it was notified of the assailed "Order to Pay," and it was allowed to file a motion for reconsideration. Given these, we are of the view that the **minimum requirements of administrative due process have been complied with in this case.**[14] (emphasis in the original)

In fine, the assailed LLDA orders of January 21, 2008 and July 11, 2008 correctly reckoned the two periods within which petitioner was found to have continued discharging pollutive wastewater and applied the penalty as provided for under Article VI, Section 32 of LLDA Resolution No. 33, Series of 1996.[15] LLDA's explanation that behind its inclusion of certain days in its computation of the imposable penalties — that it had already deducted not just the period during which the LLDA Laboratory underwent rehabilitation work from December 1, 2000 to June 30, 2001 (covering 212 days) but had also excluded from the computation the period during which no inspections

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[14] *Vide* note 1 at 2155-2156.

[15] **Section 32. Penalty for Violating the Prohibited Acts.** Any person who shall violate any of the provisions of Article V of these rules and regulations or any order or decision of the Authority, shall be liable to a penalty of not to exceed one thousand pesos (₱1,000) for each day during which such violation or default continues, or by imprisonment of from two (2) years to six (6) years, or both fine and imprisonment after due notice and hearing, and in addition such person maybe required or enjoined from continuing such violation.

or compliance monitorings were conducted (a period covering two years and four months) is well-taken.

It is noted that during the hearing on June 19, 2007, the LLDA gave petitioner the opportunity "to submit within fifteen (15) days . . . any valid documents to show proof of its non-operating dates that would be necessary for the possible reduction of the accumulated daily penalties,"[16] but petitioner failed to comply therewith.

As earlier noted, petitioner filed a Manifestation and Motion to which it attached Daily Operation Reports and Certifications, which voluminous documents were, however, *unverified* in derogation of Rule X, Section 2[17] of the 2004 Revised Rules, Regulations and Procedures Implementing Republic Act No. 4850. Absent such verification, the LLDA may not be faulted for treating such evidence to be purely self-serving.

Respecting LLDA's decision not to attach any evidentiary weight to the Daily Operation Reports or Certifications, recall that the LLDA conducted an analysis of petitioner's wastewater discharge on August 31, 2000, upon receiving a phone-in complaint. And it conducted too an analysis on May 3, 2002 in the course of periodic compliance monitoring. The Daily Operation Reports for both August 31, 2000[18] and May 3, 2002[19] submitted by petitioner clearly manifest that the plant did not operate on those dates. On the other hand, LLDA's Investigation Report and Report of Inspection[20] dated August 31, 2000 and

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[16] *Vide* note 4 at 45.

[17] **Section 2. Computation of Penalties for Pollution Related Cases.** The amount of penalties shall be computed in accordance with the existing guidelines of the Committee. The amount of penalties shall be computed from the date of initial sampling when the violation was discovered until the date of the actual cessation of the pollution or actual clearance of the source of pollution **unless the actual number of days of discharge is proven otherwise by the respondent through verified documentary evidence.**

[18] Annexes "1-156", CA *rollo*, p. 208.

[19] Annexes "9-107", *id.* at 654.

[20] *Id.* at 2104-2112.

May 3, 2002, respectively, disclose otherwise. Petitioner never disputed the factual findings reflected in these reports. Thus spawns doubts on the veracity and accuracy of the Daily Operation Reports.

Petitioner asserts that LLDA had not credited it for undertaking remedial measures to rehabilitate its wastewater treatment facility, despite the prohibitive costs and at a time when its income from the agro-industrial business was already severely affected by a poor business climate; and that the enforcement of the assailed LLDA orders amounted to a gross disincentive to its business.

Without belaboring petitioner's assertions, it must be underscored that the protection of the environment, including bodies of water, is no less urgent or vital than the pressing concerns of private enterprises, big or small. Everyone must do their share to conserve the national patrimony's meager resources for the benefit of not only this generation, but of those to follow. The length of time alone it took petitioner to upgrade its WTF (from 2003 to 2007), a move arrived at only under threat of continuing sanctions, militates against any genuine concern for the well-being of the country's waterways.

WHEREFORE, the petition is *DENIED*. The October 27, 2009 Decision and the February 23, 2010 Resolution, of the Court of Appeals in CA-G. R. SP No. 107449, are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193105. May 30, 2011]

CLAY & FEATHER INTERNATIONAL, INC., RAUL O. ARAMBULO, and ADAM E. JIMENEZ III (for themselves and for Clay and Feather Intl., Inc.), *petitioners, vs.* **ALEXANDER T. LICHAYTOO and CLIFFORD T. LICHAYTOO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; PROBABLE CAUSE; DEFINED AND CONSTRUED. — Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial. Probable cause is meant such set of facts and circumstances, which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average person weights facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion, but it requires less than evidence that would justify a conviction.

2. ID.; ID.; ID.; ID.; FINDING OF PROBABLE CAUSE; PURPOSE, EXPLAINED. — A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the act or omission complained of constitutes the offense charged. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A trial is intended precisely for the reception of prosecution evidence in support of the charge. The court is

tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at a trial on the merits.

3. CRIMINAL LAW; THEFT; ELEMENTS. — To constitute the crime of Theft, defined and penalized under Article 308 of the Revised Penal Code, the following elements must be established that: (1) there be taking of personal property; (2) said property belongs to another; (3) the taking be done with intent to gain; (4) the taking be done without the consent of the owner; and (5) the taking be accomplished without use of violence against or intimidation of persons or force upon things.

4. ID.; ID.; WHEN QUALIFIED; ELEMENTS. — Theft is qualified under Article 310 of the Revised Penal Code under the following circumstances: (1) if the theft is committed by a domestic servant; (2) if the theft is committed with grave abuse of confidence; (3) if the property stolen is a (a) motor vehicle, (b) mail matter, or (c) large cattle; (4) if the property stolen consists of coconuts taken from the premises of a plantation; (5) if the property is fish taken from a fishpond or fishery; or (6) if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident, or civil disturbance.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; THE PRESENCE OR ABSENCE OF THE ELEMENTS OF THE CRIME IS EVIDENTIARY IN NATURE AND IS A MATTER OF DEFENSE THAT MAY BE PASSED UPON AFTER A FULL-BLOWN TRIAL ON THE MERITS. — The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's evidence in support of the charge. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.

APPEARANCES OF COUNSEL

Zulueta Puno and Ferrer Law Offices for petitioners.
Poblador Bautista & Reyes for respondents.

R E S O L U T 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 February 26, 2010 and the Resolution[2] dated July 21, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 111007.

The facts of the case are, as follows:

Petitioners Raul Arambulo (Arambulo) and Adam E. Jimenez III (Jimenez) and respondents Alexander T. Lichaytoo (Alexander) and Clifford Lichaytoo (Clifford) are stockholders and incorporators of Clay & Feather International, Inc. (CFII), a domestic corporation engaged in the business of marketing guns and ammunitions. Petitioner Arambulo is the President of CFII, while petitioner Jimenez is a member of the Board of Directors. On the other hand, respondent Alexander is the Corporate Secretary of CFII, while respondent Clifford is its Chief Finance Officer/Treasurer. Petitioners own fifty percent (50%) of the shares of stock of CFII, and respondents own the remaining 50%.[3]

In a complaint-affidavit dated April 4, 2008, petitioners charged respondents before the Office of the City Prosecutor of Makati with the crime of five (5) counts of Qualified Theft, defined

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[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Rosalinda Asuncion-Vicente and Franchito N. Diamante, concurring; *rollo*, pp. 52-74.

[2] Penned by Associate Justice Ramon C. Garcia, with Associate Justices Mariflor P. Punzalan Castillo and Franchito N. Diamante, concurring; *id.* at 77-78.

[3] *Id.* at 53.

and penalized under Article 310, in relation to Article 308, of the Revised Penal Code.[4]

Petitioners alleged that sometime in February 2006 to November 2007, respondents, by virtue of their positions in CFII and with grave abuse of confidence, intentionally, maliciously, and feloniously, with intent to gain and to profit thereby, took several firearms owned by CFII without the knowledge and consent of the corporation and its stockholders. The firearms taken are, as follows:

Source of Firearms	Kind	Make	Caliber	Serial No.	Date Taken	Amount
1. C & F	Shotgun	Beretta DT10 Skeet	12ga	AG0222B	February 2006	Euro 3,577.00
2. C & F	Shotgun	Beretta DT10 LTD Trap	12ga	AF9670B	February 2006	Euro 3,894.00
3. C & F	Shotgun	Beretta DT10L Trap	12ga	AF6715B	November 2007	Euro 5,091.00
4. C & F	Shotgun	Beretta	20ga	AA311917 AB315666	June 2007	Euro 590
5. C & F	Shotgun	Beretta	12ga	C15987B	November 2006	Euro 12,066.00
TOTAL AMOUNT						Euro 25,218.00*

* Philippine Currency equivalent is One Million Six Hundred Thirty Nine Thousand One Hundred Seventy Pesos (₱1,639,170.00) at the rate of Sixty-Five Pesos per Euro (₱65/Euro).[5]

In their counter-affidavit dated May 5, 2008, respondents sought the dismissal of the criminal complaint, and stressed

[4] *Id.* at 54.

[5] *Id.*

that petitioners filed the same as a form of harassment intended to divest respondents of their interests in CFII, as well as in retaliation of the criminal complaint for Qualified Theft that they previously filed against petitioner Arambulo. They argued that there was no basis for petitioners to charge them with Qualified Theft, as the subject firearms were purchased by them, and were, in fact, already paid in full. They averred that since CFII does not maintain a Euro bank account, all foreign exchange payments for the company's purchases of guns and ammunitions were deposited in respondents' Euro bank accounts with Hongkong and Shanghai Bank. Like all corporate financial transactions of CFII, the payments for the subject firearms described in items 1, 2, and 5 were deposited in the Euro accounts of respondents. As payments for the firearms described in items 1 and 2, which cost Euro 3,577.00 and Euro 3,894.00, respectively, respondents deposited the total amount of Euro 7,471.00 in the Euro bank account under the name "Clifford/ Alexander Lichaytoo." As to the firearm described in item 5, the amount of Euro 12,066.00 was debited from the Euro account under the name "Clifford/Melissa Lichaytoo." Respondents claimed that even petitioner Arambulo did this practice when he himself purchased guns from CFII.[6]

Respondents further claimed that the firearms described in items 3 and 4 were paid by way of offsetting against advances made by respondent Alexander for CFII's importation of 2,000 Beretta 92s pistols. They alleged that these transactions were fully accounted for and disclosed to the auditor, who was chosen by petitioners themselves, and that petitioner Arambulo was aware of the offsetting for the firearms described in items 3 and 4, since he was closely monitoring the payments made by CFII to respondent Alexander.[7]

On May 9, 2008, petitioners filed a reply-affidavit, refuting the arguments of respondents. They admitted that CFII does not have a Euro bank account in its name, and that the corporation

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

[7] *Id.* at 56.

uses the Euro bank accounts of respondents to send payments in Euros to their suppliers. However, petitioners stressed that respondents cannot claim ownership of the funds, which were sent to the suppliers of the firearms, since the foreign currency (Euro) was purchased from currency dealers using CFII funds generated from its corporate funds and orders paid in advance by its customers. Thus, petitioners argued that this fact does not indicate that the funds used and deposited by respondents in paying for the firearms under items 1,2, and 5 were respondent Alexander's personal funds. In the same manner, the remittances to CFII suppliers withdrawn from the Euro bank accounts of petitioners do not show to which supplier and to what particular firearms the deposits and payments pertain. No concrete proof was shown that the firearms under items 3 and 4 were indeed the subject of offsetting from the advances made by respondent Alexander to CFII's purchase of the 2,000 Beretta 92s pistols. The petty cash vouchers attached to the counter-affidavit of respondents were too general, there being no particular breakdown and official receipts presented to correlate the same to the alleged offsetting.[8]

After the submission of the rejoinder-affidavit of respondents and of the sur-rejoinder affidavit of petitioners, and after the requisite preliminary investigation, the Office of the City Prosecutor of Makati City issued a Resolution[9] on July 7, 2008, the *fallo* of which reads:

> Foregoing considered, it is respectfully recommended that the complaint against respondents Clifford T. Lichaytoo and Alexander T. Lichaytoo for the crime of Qualified Theft be DISMISSED for insufficiency of evidence.[10]

Aggrieved, petitioners filed a petition for review before the Office of the Secretary of the Department of Justice. On June

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[8] *Id.* at 57.

[9] Penned by Assistant City Prosecutor Edna J. Conde, with the approval of City Prosecutor Feliciano Aspi; *id.* at 217-221.

[10] *Id.* at 221.

2, 2009, the Secretary of Justice issued a resolution,[11] the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant Petition is hereby **GRANTED** and the Resolution of the Office of the City Prosecutor of Makati dated July 7, 2008 is hereby **REVERSED and SET ASIDE**. The Office of the City Prosecutor of Makati is hereby ordered to file the necessary information/s against [respondents] Alexander and Clifford Lichaytoo and to report the action taken within ten (10) days from the receipt hereof.
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> SO ORDERED.[12]

Respondents filed a motion for reconsideration. However, the same was denied in a resolution[13] dated August 20, 2009. Respondents then filed a petition for *certiorari* with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 65 of the Rules of Court before the CA. On February 26, 2010, the CA rendered a Decision,[14] the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant Petition for *Certiorari* is hereby **GRANTED**. The assailed Resolutions dated June 2, 2009 and August 20, 2009 of public respondent Secretary of Justice are **ANNULLED**. Accordingly, the Resolution dated July 7, 2008 of the Office of the City Prosecutor of Makati City dismissing the complaint for Qualified Theft is **REINSTATED**. The Regional Trial Court, Branch 150, Makati City is **ORDERED** to **DISMISS and QUASH** the Informations for Qualified Theft against [respondents].
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> SO ORDERED.[15]

Petitioners filed a motion for reconsideration. On July 21, 2010, the CA issued a Resolution[16] denying the said motion. Hence, the instant petition.

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[11] Penned by Secretary Raul M. Gonzalez; *id.* at 129-137.

[12] *Id.* at 136.

[13] Penned by Acting Secretary Agnes VST Devanadera; *id.* at 138-139.

[14] *Supra* note 1.

[15] *Id.* at 74.

[16] *Supra* note 2.

The sole issue for resolution is whether the CA committed reversible error in ordering the dismissal of the information for 5 counts of Qualified Theft against respondents. The resolution of the issue requires a determination of the existence of probable cause, in order to indict respondents for Qualified Theft.

We rule in favor of petitioners.

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial. Probable cause is meant such set of facts and circumstances, which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion, but it requires less than evidence that would justify a conviction.[17]

A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the act or omission complained of constitutes the offense charged.[18] The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A trial is intended precisely for the reception of prosecution evidence in support of the charge. The court is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at a trial on the merits.[19]

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[17] *Sarigumba v. Sandiganbayan*, 491 Phil. 704-705, 719-720 (2005).

[18] *Atty. Rison v. Hon. Desierto,* 484 Phil. 63, 71 (2004).

[19] *Id.*

To constitute the crime of Theft, defined and penalized under Article 308[20] of the Revised Penal Code, the following elements must be established that: (1) there be taking of personal property; (2) said property belongs to another; (3) the taking be done with intent to gain; (4) the taking be done without the consent of the owner; and (5) the taking be accomplished without use of violence against or intimidation of persons or force upon things.[21]

Theft is qualified under Article 310[22] of the Revised Penal Code under the following circumstances: (1) if the theft is committed by a domestic servant; (2) if the theft is committed with grave abuse of confidence; (3) if the property stolen is a (a) motor vehicle, (b) mail matter, or (c) large cattle; (4) if the property stolen consists of coconuts taken from the premises of

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[20] Art. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

[21] *Valenzuela v. People of the Philippines*, G. R. No. 160188, June 21, 2007, 525 SCRA 308, 324; *Tan v. People*, 372 Phil. 96,105 (1999); *United States v. De Vera*, 43 Phil. 1000 (1922).

[22] Art. 310. *Qualified Theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consist of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

a plantation; (5) if the property is fish taken from a fishpond or fishery; or (6) if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident, or civil disturbance.

In the instant case, the affidavit-complaint and the pleadings petitioners filed with the Office of the City Prosecutor sufficiently show all the elements of theft. The evidence on hand sufficiently shows that, more likely than not, the crime of Qualified Theft has been committed and the same was committed by respondents. There was unlawful taking by respondents of the subject firearms that incontestably belonged to CFII. The taking was without the consent of the owner CFII and was accomplished without the use of violence against or intimidation of persons or force upon things. Furthermore, the subject firearms were taken with grave abuse of confidence in as much as respondents could not have taken the subject firearms if not for the positions that they held in the company. This last circumstance qualifies the offense charged. However, our pronouncement as to the existence of probable cause does not delve into the merits of the case; neither do we pronounce that the evidence is sufficient to secure a conviction.

The counter-allegations of respondents essentially delve on evidentiary matters that are best passed upon in a full-blown trial. The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's evidence in support of the charge.[23] The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[24]

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[23] *Quiambao v. Desierto*, G.R. No. 149069, September 20, 2004, 438 SCRA 496-497, 508.

[24] *Andres v. Cuevas*, G.R. No. 150869, June 9, 2005, 460 SCRA 40, 52.

WHEREFORE, in view of the foregoing, the instant petition is *GRANTED*. The Decision dated February 26, 2010 and the Resolution dated July 21, 2010 of the Court of Appeals in CA-G.R. SP No. 111007 are hereby *REVERSED and SET ASIDE*. The Resolution of the Secretary of Justice dated June 2, 2009 is hereby *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193178. May 30, 2011]

PHILIPPINE SAVINGS BANK, *petitioner, vs.* **SPOUSES ALFREDO M. CASTILLO AND ELIZABETH C. CASTILLO, and SPOUSES ROMEO B. CAPATI and AQUILINA M. LOBO,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; PROMISSORY NOTE; THE UNILATERAL DETERMINATION AND IMPOSITION OF INCREASED INTEREST RATES IS VIOLATIVE OF THE PRINCIPLE OF MUTUALITY OF CONTRACTS. — The unilateral determination and imposition of the increased rates is violative of the principle of mutuality of contracts under Article 1308 of the Civil Code, which provides that "[t]he contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them." A perusal of the Promissory Note will readily show that the increase or decrease of interest rates hinges solely on the discretion of petitioner. It does not require the conformity of the maker before a new interest rate

could be enforced. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result, thus partaking of the nature of a contract of adhesion, is void. Any stipulation regarding the validity or compliance of the contract left solely to the will of one of the parties is likewise invalid. x x x The order of refund was based on the fact that the increases in the interest rate were null and void for being violative of the principle of mutuality of contracts. The amount to be refunded refers to that paid by respondents when they had no obligation to do so. Simply put, petitioner should refund the amount of interest that it has illegally imposed upon respondents. Any deficiency in the payment of the obligation can be collected by petitioner in a foreclosure proceeding, which it already did.

2. CIVIL LAW; CONTRACTS; THERE CAN BE NO CONTRACT IN ITS TRUE SENSE WITHOUT THE MUTUAL ASSENT OF THE PARTIES; EXPLAINED. — Basic is the rule that there can be no contract in its true sense without the mutual assent of the parties. If this consent is absent on the part of one who contracts, the act has no more efficacy than if it had been done under duress or by a person of unsound mind. Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, the interest rate is undeniably always a vital component, for it can make or break a capital venture. Thus, any change must be mutually agreed upon, otherwise, it produces no binding effect.

3. ID.; ID.; ESCALATION CLAUSES; VALIDITY THEREOF, CONSTRUED. — Escalation clauses are generally valid and do not contravene public policy. They are common in credit agreements as means of maintaining fiscal stability and retaining the value of money on long-term contracts. To prevent any one-sidedness that these clauses may cause, we have held in *Banco Filipino Savings and Mortgage Bank v. Judge Navarro* that there should be a corresponding de-escalation clause that would authorize a reduction in the interest rates corresponding to downward changes made by law or by the Monetary Board. As can be gleaned from the parties' loan agreement, a de-escalation clause is provided, by virtue of which, petitioner had lowered its interest rates. Nevertheless, the validity of

the escalation clause did not give petitioner the unbridled right to unilaterally adjust interest rates. The adjustment should have still been subjected to the mutual agreement of the contracting parties. In light of the absence of consent on the part of respondents to the modifications in the interest rates, the adjusted rates cannot bind them notwithstanding the inclusion of a de-escalation clause in the loan agreement.

4. ID.; DAMAGES; MORAL DAMAGES; WHEN MAY BE RECOVERED; NOT PRESENT IN CASE AT BAR. — Moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the party from whom it is claimed acted fraudulently or in bad faith or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a fraudulent or malevolent manner. In this case, we are not sufficiently convinced that fraud, bad faith, or wanton disregard of contractual obligations can be imputed to petitioner simply because it unilaterally imposed the changes in interest rates, which can be attributed merely to bad business judgment or attendant negligence. Bad faith pertains to a dishonest purpose, to some moral obliquity, or to the conscious doing of a wrong, a breach of a known duty attributable to a motive, interest or ill will that partakes of the nature of fraud. Respondents failed to sufficiently establish this requirement. Thus, the award of moral and exemplary damages is unwarranted. In the same vein, respondents cannot recover attorney's fees and litigation expenses. Accordingly, these awards should be deleted.

5. ID.; ID.; THE AWARD FOR REFUND SHOULD INCLUDE LEGAL INTEREST; SUSTAINED. — However, as regards the above mentioned award for refund to respondents of their interest payments in excess of 17% per annum, the same should include legal interest. In *Eastern Shipping Lines, Inc. v. Court of Appeals,* we have held that when an obligation is breached, and it consists in the payment of a sum of money, the interest on the amount of damages shall be at the rate of 12% *per annum*, reckoned from the time of the filing of the complaint.

APPEARANCES OF COUNSEL

Salgado Masangya Bagoy and Associates for petitioner.
Antonio Navarro for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking to partially reconsider and modify the Decision[2] dated August 27, 2009 and the Resolution[3] dated August 4, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 86445.

Respondent spouses Alfredo M. Castillo and Elizabeth Capati-Castillo were the registered owners of a lot located in Tondo, Manila, covered by Transfer Certificate of Title (TCT) No. 233242. Respondent spouses Romeo B. Capati and Aquilina M. Lobo were the registered owners of another lot, covered by TCT No. 227858, also located in Tondo, Manila.

On May 7, 1997, respondents obtained a loan, with real estate mortgage over the said properties, from petitioner Philippine Savings Bank, as evidenced by a Promissory Note with a face value of ₱2,500,000.00. The Promissory Note, in part, reads:

FOR VALUE RECEIVED, I/We, solidarily, jointly and severally, promise to pay to the order of PHILIPPINE SAVINGS BANK, at its head office or at the above stated Branch the sum of TWO MILLION FIVE HUNDRED THOUSAND PESOS ONLY (₱2,500,000.00), Philippine currency, with interest at the rate of seventeen per centum (17%) per annum, from date until paid, as follows:

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[1] *Rollo*, pp. 12-29.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Celia C. Librea-Leagogo and Normandie B. Pizarro, concurring; *id.* at 30-52.

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

₱43,449.41 (principal and interest) monthly for fifty nine (59) months starting June 07, 1997 and every 7th day of the month thereafter with balloon payment on May 07, 2002.

Also, the rate of interest herein provided shall be subject to review and/or adjustment every ninety (90) days.

All amortizations which are not paid on due date shall bear a penalty equivalent to three percent (3%) of the amount due for every month or fraction of a month's delay.

The rate of interest and/or bank charges herein stipulated, during the terms of this promissory note, its extensions, renewals or other modifications, may be increased, decreased or otherwise changed from time to time within the rate of interest and charges allowed under present or future law(s) and/or government regulation(s) as the PHILIPPINE SAVINGS BANK may prescribe for its debtors.

Upon default of payment of any installment and/or interest when due, all other installments and interest remaining unpaid shall immediately become due and payable. Also, said interest not paid when due shall be added to, and become part of the principal and shall likewise bear interest at the same rate herein provided.[4]

From the release of the loan in May 1997 until December 1999, petitioner had increased and decreased the rate of interest, the highest of which was 29% and the lowest was 15.5% per annum, per the Promissory Note.

Respondents were notified in writing of these changes in the interest rate. They neither gave their confirmation thereto nor did they formally question the changes. However, respondent Alfredo Castillo sent several letters to petitioner requesting for the reduction of the interest rates.[5] Petitioner denied these requests.

Respondents regularly paid their amortizations until December 1999, when they defaulted due to financial constraints. Per petitioner's table of application of payment, respondents'

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[4] Cited in the CA Decision dated August 27, 2009; *id.* at 32.

[5] Letters dated April 6, 1998, April 30, 1998, September 3, 1998, and July 23, 1999; *id.* at 60-63.

outstanding balance was ₱2,231,798.11.[6] Petitioner claimed that as of February 11, 2000, respondents had a total outstanding obligation of ₱2,525,910.29.[7] Petitioner sent them demand letters. Respondents failed to pay.

Thus, petitioner initiated an extrajudicial foreclosure sale of the mortgaged properties. The auction sale was conducted on June 16, 2000, with the properties sold for ₱2,778,611.27 and awarded to petitioner as the only bidder. Being the mortgagee, petitioner no longer paid the said amount but rather credited it to the loan amortizations and arrears, past due interest, penalty charges, attorney's fees, all legal fees and expenses incidental to the foreclosure and sale, and partial payment of the mortgaged debt. On even date, a certificate of sale was issued and submitted to the Clerk of Court and to the *Ex-Officio* Sheriff of Manila.

On July 3, 2000, the certificate of sale, *sans* the approval of the Executive Judge of the Regional Trial Court (RTC), was registered with the Registry of Deeds of Manila.

Respondents failed to redeem the property within the one-year redemption period. However, on July 18, 2001, Alfredo Castillo sent a letter to petitioner requesting for an extension of 60 days before consolidation of its title so that they could redeem the properties, offering ₱3,000,000.00 as redemption price. Petitioner conceded to Alfredo Castillo's request, but respondents still failed to redeem the properties.

On October 1, 2001, respondents filed a case for Reformation of Instruments, Declaration of Nullity of Notarial Foreclosure Proceedings and Certificate of Sale, Cancellation of Annotations on TCT Nos. 233242 and 227858, and Damages, with a plea for the issuance of a temporary restraining order (TRO) and/or writ of preliminary prohibitory injunction, with the RTC, Branch 14, Manila.

On October 5, 2001, the RTC issued a TRO. Eventually, on October 25, 2001, it issued a writ of preliminary injunction.

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[6] *Id.* at 64-66.

[7] Petition for Review on *Certiorari*; *id.* at 15.

After trial, the RTC rendered its decision dated July 30, 2005, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs, and against the defendants in the following manner:
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> 1. Declaring the questioned increases of interest as unreasonable, excessive and arbitrary and ordering the defendant Philippine Savings Bank to refund to the plaintiffs, the amount of interest collected in excess of seventeen percent (17%) per annum;
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> 2. Declaring the Extrajudicial Foreclosure conducted by the defendants on June 16, 2000 and the subsequent proceedings taken thereafter to be void *ab initio*. In this connection, defendant Register of Deeds is hereby ordered to cause the cancellation of the corresponding annotations at the back of Transfer Certificates of Title No. 227858 and 233242 in the name of Spouses Alfredo and Elizabeth Castillo and Spouses Romeo Capati and Aquilina M. Lobo;
>
> 3. Defendant Philippine Savings Bank is adjudged to pay plaintiffs the amount of Php50,000.00 as moral damages; Php50,000.00 as exemplary damages; and attorney's fees in the amount of Php30,000.00 and Php3,000.00 per appearance.
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> 4. Defendants' counterclaims are hereby **DISMISSED** for lack of merit.
>
> With costs against the defendant Philippine Savings Bank, Inc.
>
> SO ORDERED.[8]

Petitioner filed a motion for reconsideration. The RTC partially granted the motion in its November 30, 2005 Order, modifying the interest rate from 17% to 24% per annum.[9]

Petitioner appealed to the CA. The CA modified the decision of the RTC, thus —

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[8] Cited in CA Decision dated August 27, 2009; *id.* at 30-31.

[9] Per the CA Decision dated August 27, 2009; *id.* at 35.

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court is hereby **AFFIRMED WITH MODIFICATIONS.** The *fallo* shall now read:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants in the following manner:
>
> 1. Declaring the questioned increases of interest as unreasonable, excessive and arbitrary and ordering the defendant Philippine Savings Bank to refund to the plaintiffs, the amount of interest collected in excess of seventeen percent (17%) per annum;
>
> 2. Declaring the Extrajudicial Foreclosure conducted by the defendants on June 16, 2000 and the subsequent proceedings taken thereafter to be valid[;]
>
> 3. Defendant Philippine Savings Bank is adjudged to pay plaintiffs the amount of Php 25,000.00 as moral damages; Php 50,000.00 as exemplary damages; and attorney's fees in the amount of Php 30,000.00 and Php 3,000.00 per appearance;
>
> 4. Defendants' counterclaims are hereby **DISMISSED** for lack of merit.
>
> With costs against the defendant Philippine Savings Bank, Inc.
>
> **SO ORDERED.**[10]

Hence, this petition anchored on the contention that the CA erred in: (1) declaring that the modifications in the interest rates are unreasonable; and (2) sustaining the award of damages and attorney's fees.

The petition should be partially granted.

The unilateral determination and imposition of the increased rates is violative of the principle of mutuality of contracts under Article 1308 of the Civil Code, which provides that "[t]he contract must bind both contracting parties; its validity or compliance

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[10] *Id.* at 50-51.

cannot be left to the will of one of them."[11] A perusal of the Promissory Note will readily show that the increase or decrease of interest rates hinges solely on the discretion of petitioner. It does not require the conformity of the maker before a new interest rate could be enforced. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result, thus partaking of the nature of a contract of adhesion, is void. Any stipulation regarding the validity or compliance of the contract left solely to the will of one of the parties is likewise invalid.

Petitioner contends that respondents acquiesced to the imposition of the modified interest rates; thus, there was no violation of the principle of mutuality of contracts. To buttress its position, petitioner points out that the exhibits presented by respondents during trial contained a uniform provision, which states:

> The interest rate adjustment is in accordance with the Conformity Letter you have signed amending your account's interest rate review period from ninety (90) to thirty days.[12]

It further claims that respondents requested several times for the reduction of the interest rates, thus, manifesting their recognition of the legality of the said rates. It also asserts that the contractual provision on the interest rates cannot be said to be lopsided in its favor, considering that it had, on several occasions, lowered the interest rates.

We disagree. The above-quoted provision of respondents' exhibits readily shows that the conformity letter signed by them does not pertain to the modification of the interest rates, but rather only to the amendment of the interest rate review period

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[11] *Floirendo, Jr. v. Metropolitan Bank and Trust Company*, G.R. No. 148325, September 3, 2007, 532 SCRA 43, 50; *New Sampaguita Builders Construction, Inc. (NSBCI) v. Philippine National Bank*, 479 Phil. 483, 497 (2004); *Philippine National Bank v. Court of Appeals*, G.R. No. 88880, April 30, 1991, 196 SCRA 536, 544-545.

[12] *Supra* note 1, at 19.

from 90 days to 30 days. Verily, the conformity of respondents with respect to the shortening of the interest rate review period from 90 days to 30 days is separate and distinct from and cannot substitute for the required conformity of respondents with respect to the modification of the interest rate itself.

Moreover, respondents' assent to the modifications in the interest rates cannot be implied from their lack of response to the memos sent by petitioner, informing them of the amendments. The said memos were in the nature of a proposal to change the contract with respect to one of its significant components, *i.e.*, the interest rates. As we have held, no one receiving a proposal to change a contract is obliged to answer the proposal.[13] Therefore, respondents could neither be faulted, nor could they be deemed to have assented to the modified interest rates, for not replying to the said memos from petitioner.

We likewise disagree with petitioner's assertion that respondents recognized the legality of the imposed interest rates through the letters requesting for the reduction of the rates. The request for reduction of the interest does not translate to consent thereto. To be sure, a cursory reading of the said letters would clearly show that Alfredo Castillo was, in fact, questioning the propriety of the interest rates imposed on their loan, *viz.*:

> The undersigned is a mortgagor of Philippine Savings Bank with an outstanding balance of TWO MILLION FOUR HUNDRED THIRTY EIGHT THOUSAND SIX HUNDRED SIX and 63/100 (₱2,438,606.63) at an interest rate of 26% per annum (as per April 6, 1997 inquiry to Leo of the Accounting Dep't.) and with a monthly amortization of FIFTY EIGHT THOUSAND THREE HUNDRED FIFTY EIGHT AND 38/100 (₱58,358.38).
>
> I understand that the present interest rate is lower than the last month's 27%. However, it does not give our company any break from coping with our receivables. Our clients, Mercure Philippine Village Hotel, Puerto Azul Beach Hotel, Grand Air Caterer, to name

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[13] *Philippine National Bank v. Court of Appeals*, 328 Phil. 54, 63 (1996); *Philippine National Bank v. Court of Appeals*, G.R. No. 107569, November 8, 1994, 238 SCRA 20, 26-27.

a few, did not settle their obligation to us inspite of what was agreed upon during our meeting held last February 1998. Their pledge of paying us at least ONE MILLION PESOS PER AFFILIATION, which we allocate to pay our balance to your bank, was not a reliable deal to foresee because, as of this very day, not even half of the amount assured to us was settled. This situation puts the company in critical condition since we will again shoulder all the interests imposed on our loans, while, we ourselves, did not impose any surcharge with our receivables.

In connection with this, may I request for a reduction of interest rate, in my favor, *i.e.*, from 26% to 21% per annum. If such appeal is granted to us, we are assuring you of our prompt payment and keen observance to your rules and regulations.[14]

The undersigned is a mortgagor of Philippine Savings Bank with an outstanding balance of TWO MILLION FOUR HUNDRED THIRTY THREE THOUSAND EIGHTY FOUR and 73/100 (₱2,433,084.73) at an interest rate of 22.5% per annum (as per April 24, 1998 memo faxed to us) and with a monthly amortization of FIFTY TWO THOUSAND FIVE HUNDRED FIFTY EIGHT AND 01/100 (₱52,55[8].01).

Such reduction of interest rate is an effect of our currency's development. But based on our inquiries and research to different financial institutions, the rate your bank is imposing to us is still higher compared to the eighteen and a half percent (18.5%) others are asking. With this situation, we are again requesting for a decrease on the interest rate, that is, from 22.5% to 18.5%. This figure stated is not fictitious since other bank's advertising are published to leading newspapers. The difference between your rate is visibly greater and has an immense effect on our financial obligations.[15]

The undersigned is a mortgagor at Philippine Savings Bank with an outstanding balance of TWO MILLION FOUR HUNDRED THOUSAND EIGHT HUNDRED ELEVEN and 03/100 (Php 2,40[0],811.03) at an interest rate of 21% per annum.

Letters of reconsideration were constantly sent to you to grant us lower interest rate. However, no assistance with regard to that request

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[14] Letter dated April 6, 1998; *rollo*, p. 60.

[15] Letter dated April 30, 1998; *id.* at 61.

has been extended to us. In view of this, I am requesting for a transfer of our loan from **PSBank Head Office to PSBank Mabini Branch**. This transfer is purposely intended for an appeal [for] a lower interest rate.[16]

Being a mortgagor of PSBank, I have [been] repeatedly asking for a reduction of your interest rate. However, my request has been denied since the term I started. Many banks offer a much lower interest rate and fair business transactions (*e.g.* Development Bank of Singapore [which] offers 13% p.a. interest rate).

In this connection, once more, I am requesting for a reduction of the interest rate applied to my loan to maintain our business relationship.[17]

Basic is the rule that there can be no contract in its true sense without the mutual assent of the parties. If this consent is absent on the part of one who contracts, the act has no more efficacy than if it had been done under duress or by a person of unsound mind. Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, the interest rate is undeniably always a vital component, for it can make or break a capital venture. Thus, any change must be mutually agreed upon, otherwise, it produces no binding effect.[18]

Escalation clauses are generally valid and do not contravene public policy. They are common in credit agreements as means of maintaining fiscal stability and retaining the value of money on long-term contracts. To prevent any one-sidedness that these clauses may cause, we have held in *Banco Filipino Savings and Mortgage Bank v. Judge Navarro*[19] that there should be a corresponding de-escalation clause that would authorize a reduction in the interest rates corresponding to downward changes

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[16] Letter dated September 3, 1998; *id.* at 62.

[17] Letter dated July 23, 1999; *id.* at 63.

[18] *Philippine National Bank v. Court of Appeals*, *supra* note 12, at 25-26.

[19] 236 Phil. 370 (1987).

made by law or by the Monetary Board. As can be gleaned from the parties' loan agreement, a de-escalation clause is provided, by virtue of which, petitioner had lowered its interest rates.

Nevertheless, the validity of the escalation clause did not give petitioner the unbridled right to unilaterally adjust interest rates. The adjustment should have still been subjected to the mutual agreement of the contracting parties. In light of the absence of consent on the part of respondents to the modifications in the interest rates, the adjusted rates cannot bind them notwithstanding the inclusion of a de-escalation clause in the loan agreement.

The order of refund was based on the fact that the increases in the interest rate were null and void for being violative of the principle of mutuality of contracts. The amount to be refunded refers to that paid by respondents when they had no obligation to do so. Simply put, petitioner should refund the amount of interest that it has illegally imposed upon respondents. Any deficiency in the payment of the obligation can be collected by petitioner in a foreclosure proceeding, which it already did.

On the matter of damages, we agree with petitioner. Moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the party from whom it is claimed acted fraudulently or in bad faith or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a fraudulent or malevolent manner.[20]

In this case, we are not sufficiently convinced that fraud, bad faith, or wanton disregard of contractual obligations can be imputed to petitioner simply because it unilaterally imposed the changes in interest rates, which can be attributed merely to

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[20] *Philippine National Bank v. Rocamora*, G.R. No. 164549, September 18, 2009, 600 SCRA 395, 411-412; *Pilipinas Shell Petroleum Corporation v. John Bordman, Ltd. of Iloilo, Inc.*, 509 Phil. 728, 751 (2005).

bad business judgment or attendant negligence. Bad faith pertains to a dishonest purpose, to some moral obliquity, or to the conscious doing of a wrong, a breach of a known duty attributable to a motive, interest or ill will that partakes of the nature of fraud. Respondents failed to sufficiently establish this requirement. Thus, the award of moral and exemplary damages is unwarranted. In the same vein, respondents cannot recover attorney's fees and litigation expenses. Accordingly, these awards should be deleted.[21]

However, as regards the above mentioned award for refund to respondents of their interest payments in excess of 17% per annum, the same should include legal interest. In *Eastern Shipping Lines, Inc. v. Court of Appeals*,[22] we have held that when an obligation is breached, and it consists in the payment of a sum of money, the interest on the amount of damages shall be at the rate of 12% *per annum*, reckoned from the time of the filing of the complaint.[23]

WHEREFORE, the petition is *PARTIALLY GRANTED*. The assailed Decision dated August 27, 2009 and the Resolution dated August 4, 2010 of the Court of Appeals in CA-G.R. CV No. 86445 are *AFFIRMED WITH MODIFICATIONS*, such that the award for moral damages, exemplary damages, attorney's fees, and litigation expenses is *DELETED*, and the order of refund in favor of respondents of interest payments made in excess of 17% *per annum* shall bear interest of 12% *per annum* from the time of the filing of the complaint until its full satisfaction.

SO ORDERED.

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

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[21] *Philippine National Bank v. Rocamora, supra,* at 412.

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

[23] *Id.* at 95; see *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R. No. 129227, May 30, 2000, 332 SCRA 241.

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— Proper in cases of kidnapping of a minor. (People *vs*. Marquez, G.R. No. 181440, April 13, 2011) p. 124

DEFAULT

Order of default — When a party is declared in default, it is not a denial of substantial justice; rationale. (Alicer *vs*. Compas, G.R. No. 187720, May 30, 2011) p. 722

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over positive identification of the accused. (People *vs*. Mercado, G.R. No. 189847, May 30, 2011) p. 747

— Inferior against credible positive testimony of witnesses. (People *vs*. Baluya, G.R. No. 181822, April 13, 2011) p. 140

(People *vs*. Marquez, G.R. No. 181440, April 13, 2011) p. 124

— Must be supported by clear and convincing evidence. (People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD

Jurisdiction — Decision setting the amount of just compensation is merely preliminary and not executory if challenged before the Special Agrarian Court. (Land Bank of the Phils. *vs*. Heirs of Severino Listana, G.R. No. 182758, May 30, 2011) p. 664

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Acceptance and evaluation of Financial or Technical Assistance Agreement (FTAA) — When there are two or more applicants in the same area, priority shall be given to the applicant that first filed its application. (Diamond Drilling Corp. of the Phils. *vs*. Newmont Phils., Inc., G.R. No. 183576, May 30, 2011) p. 688

Pollution Adjudication Board — Created under E.O. No. 192, placing it under the Office of the DENR Secretary which took over the powers and functions of the National Pollution Control Commission with respect to the adjudication of pollution cases, including the latter's role as arbitrator for determining reparation or restitution of the damages and losses resulting from pollution. (Universal Robina Corp. *vs*. Laguna Lake Dev't. Authority, G.R. No. 191427, May 30, 2011) p. 754

DOCUMENTARY EVIDENCE

Death Certificate — A duly registered death certificate is considered a public document and the entries therein are presumed correct; exception. (Ocean Builders Construction Corp., and/or Dennis Hao *vs*. Sps. Cubacub, G.R. No. 150898, April 13, 2011) p. 36

Public document — Due execution or genuineness of the photocopied private documents must first be shown before they may be considered admissible in evidence. (Office of the Ombudsman *vs*. Valencia, G.R. No. 183890, April 13, 2011) p. 190

DUE PROCESS

Essence of — In administrative proceedings, it is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of, and to submit any evidence he may have in support of his defense. (Universal Robina Corp. *vs*. Laguna Lake Dev't. Authority, G.R. No. 191427, May 30, 2011) p. 754

(Lacson *vs*. Hon. Executive Secretary, G.R. Nos. 165399 and 165475, May 30, 2011) p. 389

Rights to be observed in administrative proceedings — The cardinal and primary rights to be observed and respected are: (a) The right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof; (b) the tribunal must consider the evidence presented; (c) the decision must have some evidence to support a finding or conclusion; (d) the evidence must be substantial; (e) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (f) the tribunal must act on its own independent consideration of the law and facts of the controversy, and not simply accept the view of a subordinate in arriving at a decision; and (g) the tribunal should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can

know the various issues involved and the reasons for the decisions rendered. (Lacson *vs*. Hon. Executive Secretary, G.R. Nos. 165399 and 165475, May 30, 2011) p. 389

EMPLOYER-EMPLOYEE RELATIONSHIP

Employer's prerogative — It bears stressing that while an employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations, on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must always be commensurate to the offense involved and to the degree of the infraction. (Sunrise Holiday Concepts, Inc. *vs*. Arugay, G.R. No. 189457, April 13, 2011) p. 222

EMPLOYMENT, TERMINATION OF

Gross insubordination — Does not entitle the dismissed employee to separation pay. (Apacible *vs*. Multimed Industries Inc., G.R. No. 178903, May 30, 2011) p. 582

Illegal dismissal — The employees must first establish by substantial evidence, the fact of their dismissal before the burden is shifted to the employer to prove that the dismissal was legal. (Sunrise Holiday Concepts, Inc. *vs*. Arugay, G.R. No. 189457, April 13, 2011) p. 222

Loss of trust and confidence — To be a valid ground for dismissal, the breach of trust must be willful. (Sunrise Holiday Concepts, Inc. *vs*. Arugay, G.R. No. 189457, April 13, 2011) p. 222

Separation pay — Only warranted when the cause of termination is not attributable to the employee's fault, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. (Apacible *vs*. Multimed Industries Inc., G.R. No. 178903, May 30, 2011) p. 582

Termination with neither illegal dismissal nor abandonment of work — Grant of financial assistance made proper by social justice. (Luna *vs*. Allado Construction Co., Inc. and/or Ramon Allado, G.R. No. 175251, May 30, 2011) p. 509

EVIDENCE

Burden of proof — In labor cases, the quantum of proof necessary is substantial evidence, or such amount or relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (Antiquina *vs*. Magsaysay Maritime Corp. and/or Masterbulk, PTE, Ltd., G.R. No. 168922, April 13, 2011) p. 88

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — A cornerstone of our judicial system. (Universal Robina Corp. *vs*. Laguna Lake Dev't. Authority, G.R. No. 191427, May 30, 2011) p. 754

— Entails lesser expenses and provides for the speedier resolution of controversies. *(Id.)*

— The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. *(Id.)*

FORUM SHOPPING

Certificate of non-forum shopping — Failure to file shall be cause for the dismissal of the case upon motion and after hearing. (Sps. De Guzman *vs*. Ochoa, G.R. No. 169292, April 13, 2011) p. 107

— The certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure. *(Id.)*

GRAVE THREATS

Commission of — Consummated as soon as the threats come to the knowledge of the person threatened. (Paera *vs*. People, G.R. No. 181626, May 30, 2011) p. 630

— Utterance of threatening remarks at different points in time to three individuals, albeit in rapid succession, constitutes three separate criminal liabilities. *(Id.)*

JUDGES

Administrative charges against a judge — A judge cannot be held liable for an erroneous decision in the absence of malice or wrongful conduct in rendering it. (Monticalbo *vs*. Judge Maraya, Jr., A.M. No. RTJ-09-2197, April 13, 2011) p. 1

— Complainant has the burden of proving the allegations in the complaint with substantial evidence. *(Id.)*

— The filing of an administrative case against a judge is not an alternative to the other judicial remedies provided by law, neither is it complementary or supplementary to such action. *(Id.)*

JUDGMENTS

Finality or immutability of judgment — A decision issued by a court becomes final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected. (Dela Rosa *vs*. Michael Mar Phils., Inc., G.R. No. 182262, April 13, 2011) p. 154

— Final and executory judgments are immutable and unalterable except: (a) clerical errors; (b) *nunc pro tunc* which cause no prejudice to any party; and (c) void judgments. (Heirs of Maximino Derla *vs*. Heirs of Catalina Derla *Vda. de* Hipolito, G.R. No. 157717, April 13, 2011) p. 68

Judgment on the pleadings — Based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without consideration of any evidence aliunde. (PNB *vs*. Aznar, G.R. No. 171805, May 30, 2011) p. 461

JUDICIAL DEPARTMENT

Judicial decision-writing — Decision must contain clear and distinct findings of facts, and state the applicable law and jurisprudence. (Halley *vs.* Printwell, Inc., G.R. No. 157549, May 30, 2011) p. 361

— Mere similarity in language or thought between the court's decision and the party's memorandum did not justify the conclusion that the court simply copied from the memorandum. *(Id.)*

Judicial power — An inquiry on issues that are exclusively within the wisdom of the executive branch is not within the province of judicial power. (Brgy, Capt. Torrecampo *vs.* MWSS, G.R. No. 188296, May 30, 2011) p. 731

JUDICIAL NOTICE

Coverage — Foreign laws are not a matter of judicial notice, like any other fact, they must be alleged and proven. (Antiquina *vs.* Magsaysay Maritime Corp. and/or Masterbulk, PTE, Ltd., G.R. No. 168922, April 13, 2011) p. 88

JUSTIFYING CIRCUMSTANCES

Defense of a stranger — Anyone who acts in the defense of the person or rights of a stranger, provided that there are: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) absence of evil motives such as revenge and resentment. (Paera *vs.* People, G.R. No. 181626, May 30, 2011) p. 630

Fulfillment of duty or exercise of office — The use of violence by the local elective officials to ensure the delivery of basic services is outside the ambit of a criminally immune official conduct. (Paera *vs.* People, G.R. No. 181626, May 30, 2011) p. 630

— To be appreciated, there must be proof that the offense committed was the necessary consequence of the due performance of duty or the lawful exercise of the office. *(Id.)*

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Elements of the crime are: (a) the offender is a private individual; (b) he kidnaps or detains another or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping is illegal; and (d) in the commission of the offense, any of the following circumstances are present: (1) the kidnapping or detention lasts for more than 3 days; or (2) it is committed by simulating public authority; or (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. (People *vs*. Baluya, G.R. No. 181822, April 13, 2011) p. 140

— Motive, not being an element of the crime, is irrelevant. *(Id.)*

— Where the victim is a minor, lack of consent is presumed. *(Id.)*

Deprivation of liberty — Means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. (People *vs*. Baluya, G.R. No. 181822, April 13, 2011) p. 140

KIDNAPPING OF MINORS

Commission of — Has the following elements: (a) the offender is entrusted with the custody of a minor person; and (b) the offender deliberately fails to restore the said minor to his parents or guardians. (People *vs*. Marquez, G.R. No. 181440, April 13, 2011) p. 124

LAND REGISTRATION

Reconstitution of title — The nullity of the reconstituted certificate does not by itself settle the issue of ownership over the property; issue of ownership must be litigated in the appropriate proceedings not in the action for the issuance of a new owner's duplicate certificate of title or in the proceedings to annul such newly issued duplicate. (Espino *vs*. Sps. Bulut, G.R. No. 183811, May 30, 2011) p. 702

MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995 (R.A. NO. 8042)

Illegal dismissal — A three (3)-month cap on the claim of illegally dismissed overseas Filipino workers with an unexpired portion of one year or more in their contracts is unconstitutional for being violative of the rights of the migrant workers to equal protection of laws and substantive due process. (Yap *vs*. Thenamaris Ship's Management, G.R. No. 179532, May 30, 2011) p. 614

MORTGAGES

Rights of mortgagee-creditor — A mortgagee-creditor has a single cause of action against a mortgagor debtor, that is, to recover the debt; he has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security. (Flores *vs*. Sps. Lindo, G.R. No. 183984, April 13, 2011) p. 210

MOTION TO DISMISS

Contents of — Like any other omnibus motion, it must raise and include all objections available at the time of its filing; exceptions. (Sps. De Guzman *vs*. Ochoa, G.R. No. 169292, April 13, 2011) p. 107

Denial of — Cannot be questioned even by a special civil action for certiorari unless tainted with grave abuse of discretion. (Sps. De Guzman *vs*. Ochoa, G.R. No. 169292, April 13, 2011) p. 107

MURDER

Commission of — Civil indemnities awarded to heirs of the victim; cited. (People *vs*. Sabella, G.R. No. 183092, May 30, 2011) p. 679

NATIONAL LABOR RELATIONS COMMISSION (NLRC)

Appeal— Authority of the NLRC to correct errors in the exercise of its appellate jurisdiction does not include review of the entire case above and beyond the sole legal question raised. (Luna *vs*. Allado Construction Co., Inc. and/or Ramon Allado, G.R. No. 175251, May 30, 2011) p. 509

— The NLRC shall limit itself only to the specific issues that were elevated for review. *(Id.)*

OBLIGATIONS

Solidary obligation — Defined as one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors; there is no right of reimbursement to speak of, where the obligation of the defendants to pay is yet to be determined. (Navida *vs.* Judge Dizon, Jr., G.R. No. 125078, May 30, 2011) p. 283

— The right of the remaining defendants to seek reimbursement will not be affected by the compromise agreements entered into by other defendants with some claimants. *(Id.)*

OFFICE OF THE SOLICITOR GENERAL

Duties — The office is mandated to represent the government and its officials and agents in any litigation, proceedings, investigation, or matter requiring the services of lawyers. (Bureau of Customs *vs*. Sherman, G.R. No. 190487, April 13, 2011) p. 247

OMBUDSMAN

Jurisdiction— Power of the Ombudsman to investigate offenses involving public officials is concurrent with other similarly authorized agencies of the government in relation to the offense charged. (Lacson *vs*. Hon. Executive Secretary, G.R. Nos. 165399 and 165475, May 30, 2011) p. 389

OWNERSHIP

Quieting of title — A party has no right to ask for the quieting of title if he has no legal and/or equitable right over the subject property. (PNB *vs*. Aznar, G.R. No. 171805, May 30, 2011) p. 461

PARTIES TO CIVIL ACTIONS

Real parties-in-interest — Defined as one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. (Miñoza *vs*. Hon. Lopez, G.R. No. 170914, April 13, 2011) p. 115

PHILIPPINE CENTENNIAL EXPO '98 CORPORATION

Nature — It is considered a private corporation as it was incorporated under the Corporation Code and was registered with the Securities and Exchange Commission. (People *vs*. Morales, G.R. No. 166355, May 30, 2011) p. 429

PLEADINGS

Verification requirement — Not a requisite in a complaint for damages. (Vallacar Transit, Inc. *vs*. Catubig, G.R. No. 175512, May 30, 2011) p. 529

— Simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. (Sps. De Guzman *vs*. Ochoa, G.R. No. 169292, April 13, 2011) p. 107

— The requirement regarding verification of a pleading is formal, not jurisdictional. *(Id.)*

PRELIMINARY INJUNCTION

Injunction bond — Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. (Land Bank of the Phils. *vs*. Heirs of Severino Listana, G.R. No. 182758, May 30, 2011) p. 664

PRELIMINARY INVESTIGATION

Probable cause — A finding of a probable cause does not require an inquiry whether there is sufficient evidence to procure a conviction. (Miller *vs.* Sec. Perez, G.R. No. 165412, May 30, 2011) p. 405

— A full and exhaustive presentation of the parties' evidence is not required therein, but only such as may engender a well-founded belief that an offense has been committed and that the respondent is probably guilty thereof. *(Id.)*

— Defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. *(Id.)*

— Determination of probable cause for the purpose of filing an information is an executive function and the court does not interfere in the conduct thereof except when the same is rendered without or in excess of authority. *(Id.)*

Purpose — Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans *vs.* Ombudsman Desierto, G.R. No. 135715, April 13, 2011) p. 16

PRESCRIPTION OF ACTIONS

Action to enforce a written contract — Must be brought within ten years from the time the right of action accrues. (PNB *vs.* Aznar, G.R. No. 171805, May 30, 2011) p. 461

Prescription for the crime committed in 1976 and prior to the amendment of R.A. No. 3019 — Ten years. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans *vs.* Ombudsman Desierto, G.R. No. 135715, April 13, 2011) p. 16

Prescription of a crime — Shall begin to run from the day of its commission; exception. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans *vs*. Ombudsman Desierto, G.R. No. 135715, April 13, 2011) p. 16

Resolving issue of prescription — In resolving the issue of prescription, the following shall be considered: (a) the period of prescription for the offense charged; (b) the time the period of prescription started to run; and (c) the time the prescriptive period was interrupted. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans *vs*. Ombudsman Desierto, G.R. No. 135715, April 13, 2011) p. 16

PRE-TRIAL

Effect of failure to appear — The failure of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof. (Alicer *vs*. Compas, G.R. No. 187720, May 30, 2011) p. 722

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal property — Cannot be alienated or encumbered by a spouse without the consent, express or implied, of the other spouse, however, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse. (Flores *vs*. Sps. Lindo, G.R. No. 183984, April 13, 2011) p. 210

PROSECUTION OF OFFENSES

Information — Aggravating circumstances must be specifically alleged therein to be considered against the accused. (People *vs*. Uy, G.R. No. 174660, May 30, 2011) p. 483

Nature and cause of accusation — Determined by the actual recital of facts stated in the information or complaint. (Office of the Ombudsman *vs*. Valencia, G.R. No. 183890, April 13, 2011) p. 190

Probable cause — For purposes of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial. (Clay & Feather Int'l., Inc. *vs*. Lichaytoo, G.R. No. 193105, May 30, 2011) p. 764

— The term does not mean "actual and positive cause" nor does it import absolute certainty. *(Id.)*

Prosecution of a criminal action — Commenced by complaint or information are prosecuted under the direction and control of public prosecutors. (Bureau of Customs *vs*. Sherman, G.R. No. 190487, April 13, 2011) p. 247

PUBLIC ESTATES AUTHORITY, CHARTER OF (P.D. NO. 1084)

PEA Board — Has the power to discipline its officers and employees. (Lacson *vs*. Hon. Executive Secretary, G.R. Nos. 165399 and 165475, May 30, 2011) p. 389

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — Begins when an individual intentionally makes a false statement in any material fact, or practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment or promotion. (Office of the Ombudsman *vs*. Valencia, G.R. No. 183890, April 13, 2011) p. 190

— When the statement of wealth becomes manifestly disproportionate to an employee's income and he fails to properly account or explain his other source of income, he becomes liable for dishonesty. *(Id.)*

QUALIFIED THEFT

Commission of — Theft is qualified under the following circumstances: (a) if the theft is committed by a domestic servant; (b) if the theft is committed with grave abuse of confidence; (c) if the property stolen is a (1) motor vehicle, (2) mail matter, or (3) large cattle; (4) if the property taken

consist of coconuts taken from the premises of a plantation; (5) if the property is fish taken from a fishpond or fishery; or (6) if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident, or civil disturbance. (Clay & Feather Int'l., Inc. *vs*. Lichaytoo, G.R. No. 193105, May 30, 2011) p. 764

QUALIFYING CIRCUMSTANCES

Treachery — There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. (People *vs*. Sabella, G.R. No. 183092, May 30, 2011) p. 679

QUASI-DELICT

Concept — To sustain a claim based on quasi-delict, the following requisites must concur: (a) there must be damage caused to the plaintiff; (b) there must be negligence by act or omission, of which the defendant or some other person for whose acts the defendant must respond was guilty; and (c) there must be a connection of cause and effect between such negligence and the damage. (Navida *vs*. Judge Dizon, Jr., G.R. No. 125078, May 30, 2011) p. 283

(Ocean Builders Construction Corp., and/or Dennis Hao *vs*. Sps. Cubacub, G.R. No. 150898, April 13, 2011; *Bersamin, J., Dissenting Opinion*) p. 36

— Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. *(Id.)*

Negligence — Defined as the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do. (Ocean Builders Construction Corp., and/or Dennis Hao *vs*. Sps. Cubacub, G.R. No. 150898, April 13, 2011; *Bersamin, J., Dissenting Opinion)* p. 36

— Liability of employer for damages caused by employee is not applicable where liability of the employee is not established and the proximate cause of liability is attributable solely to the negligence of the victim. (Vallacar Transit, Inc. *vs*. Catubig, G.R. No. 175512, May 30, 2011) p. 529

Venue of action — In actions for damages based on the harmful effects of pesticides, the Regional Trial Courts of the place where the cause of action occurred are the proper and convenient venue for trying these cases and not the place where the pesticides were manufactured or packaged. (Navida *vs*. Judge Dizon, Jr., G.R. No. 125078, May 30, 2011) p. 283

RAPE

Attempted rape — Committed when the "touching" of the vagina by the penis is coupled with the intent to penetrate. (People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

— Imposable penalty. *(Id.)*

Commission of — Civil liabilities of accused, cited. (People *vs*. Mercado, G.R. No. 189847, May 30, 2011) p. 747

(People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

— Presentation of the weapon supposedly used by the accused to commit rape is not necessary for conviction. *(Id.)*

Incestuous rape of minor — Moral ascendancy of the father over the daughter-victim substitutes for force or intimidation. (People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

Prosecution of — A rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. (People *vs*. Ogarte, G.R. No. 182690, May 30, 2011) p. 642

— A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her. (People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

— Although the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are duty-bound to establish that their reliance on the victim's testimony is justified. *(Id.)*

— Conviction may be based solely on the credible testimony of the victim. (People *vs*. Ogarte, G.R. No. 182690, May 30, 2011) p. 642

— Delay in reporting the rape incident does not affect the credibility of the minor-victim. *(Id.)*

— Failure of the victim to immediately report the rape is not an indication of a fabricated charge and does not detract from the fact that rape was committed. (People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

— Guiding principles in the prosecution of rape cases. (People *vs*. Ogarte, G.R. No. 182690, May 30, 2011) p. 642

— When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge. (People *vs*. Mercado, G.R. No. 189847, May 30, 2011) p. 747

— Youth and immaturity are generally badges of truth and sincerity. (People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

Qualified rape — A certification from the Office of the Local Civil Registrar concerning the date of birth of the rape victim qualifies as an authentic document to prove her age. (People *vs*. Ogarte, G.R. No. 182690, May 30, 2011) p. 642

— Civil indemnity of accused; cited. *(Id.)*

— Minority of the victim must be established. (People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

— Punishable by death were it not for R.A. No. 9346 which reduced the death penalty to reclusion perpetua. (People *vs*. Ogarte, G.R. No. 182690, May 30, 2011) p. 642

Rape with use of deadly weapon — Use of deadly weapon must be alleged in the information and proved at the trial to be appreciated as a qualifying circumstance. (People *vs*. Publico, G.R. No. 183569, April 13, 2011) p. 168

REGIONAL TRIAL COURT

Jurisdiction — As an appellate court, the Regional Trial Court may rule upon issues not raised on appeal. (Macaslang *vs*. Zamora, G.R. No. 156375, May 30, 2011) p. 337

— Includes action for damages based on a quasi-delict where each plaintiff claims about 2.7 million. (Navida *vs*. Judge Dizon, Jr., G.R. No. 125078, May 30, 2011) p. 283

RES JUDICATA

Principle of — Applicable when the administrative proceedings take an adversary character. (Heirs of Maximino Derla *vs*. Heirs of Catalina Derla *Vda. de* Hipolito, G.R. No. 157717, April 13, 2011) p. 68

— Literally, it means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *(Id.)*

— To apply the doctrine, the following essential requisites should be satisfied: (a) finality of the former judgment; (b) the court which rendered the judgment had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter and causes of action. *(Id.)*

ROBBERY WITH HOMICIDE

Commission of — All those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same. (People *vs*. Uy, G.R. No. 174660, May 30, 2011) p. 483

— Civil liability of accused, cited. *(Id.)*

— Punishable by *reclusion perpetua* to death. *(Id.)*

— The prosecution must prove the following elements: (a) the taking of personal property belonging to another; (b) with intent to gain; (c) with the use of violence or intimidation against a person; and (d) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. *(Id.)*

RULES OF PROCEDURE

Application — Technical rules of procedure shall be liberally construed in favor of the working class in accordance with the demands of substantial justice. (Antiquina *vs.* Magsaysay Maritime Corp. and/or Masterbulk, PTE, Ltd., G.R. No. 168922, April 13, 2011) p. 88

SANDIGANBAYAN

Jurisdiction — Does not include jurisdiction over an officer of a private corporation who stands charged for violating the Anti-Graft and Corrupt Practices Act. (People *vs.* Morales, G.R. No. 166355, May 30, 2011) p. 429

SELF-DEFENSE

As an aggravating circumstance — The number, location, and severity of the hack wounds that the appellant inflicted on the victim indicate an intention to kill, and not merely to wound or defend. (People *vs.* Sabella, G.R. No. 183092, May 30, 2011) p. 679

— To escape liability, one who admits killing another in the name of self-defense bears the burden of proving: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person claiming self-defense. *(Id.)*

Unlawful aggression as an element — Must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. (People *vs.* Sabella, G.R. No. 183092, May 30, 2011) p. 679

SHERIFFS

Duties of — Duty to enforce writs of execution is ministerial and not discretionary. (Maylas *vs*. Esmeria, A.M. No. P-11-2932, May 30, 2011) p. 277

STATUTORY CONSTRUCTION

Construction — An unconstitutional act is not a law; it confers no rights; imposes no duties; affords no protection and creates no office; it is inoperative as if it has not been passed at all; exception. (Yap *vs*. Thenamaris Ship's Management, G.R. No. 179532, May 30, 2011) p. 614

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Operation Land Leasehold Program — Applicable to agricultural land of less than seven (7) hectares, devoted to rice and corn. (Estate of Pastor M. Samson *vs*. Susano, G.R. No. 179024, May 30, 2011) p. 590

Operation Land Transfer Program — Not applicable where subject land is less than seven (7) hectares and it was not shown that landowner owns other lands. (Estate of Pastor M. Samson *vs*. Susano, G.R. No. 179024, May 30, 2011) p. 590

Tenancy relationship — Metro Manila Zoning Ordinance No. 81-01 did not cease rights previously acquired over lands located within the reclassified zone which are neither residential nor industrial in nature. (Estate of Pastor M. Samson *vs*. Susano, G.R. No. 179024, May 30, 2011) p. 590

THEFT

Commission of — The elements of the crime of theft are; (a) that there be taking of personal property; (b) that said property belongs to another; (c) that the taking be done with intent to gain; (d) that the taking be done without the consent of the owner; and (e) that the taking be accomplished without the use of violence against or intimidation of persons of force upon things. (Clay Feather Int'l., Inc. *vs*. Lichaytoo, G.R. No. 193105, May 30, 2011) p. 764

TORTS

Prosecution of action anchored on torts — Three elements must be present, viz: (a) duty; (b) breach; and (c) injury and proximate causation. (Ocean Builders Construction Corp., and/or Dennis Hao *vs.* Sps. Cubacub, G.R. No. 150898, April 13, 2011) p. 36

Proximate cause — That which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces injury, and without which, the result would not have occurred. (Ocean Builders Construction Corp., and/or Dennis Hao *vs.* Sps. Cubacub, G.R. No. 150898, April 13, 2011) p. 36

TRIAL

Conduct of — The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. (Clay & Feather Int'l., Inc. *vs.* Lichaytoo, G.R. No. 193105, May 30, 2011) p. 764

TRUST

Concept — The right to the beneficial enjoyment of property, the legal title to which is vested in another. (PNB *vs.* Aznar, G.R. No. 171805, May 30, 2011) p. 461

Express trust — Created by the intention of the trustor or of the parties. (PNB *vs.* Aznar, G.R. No. 171805, May 30, 2011) p. 461

— Intentionally created by the direct and positive acts of the trustor. *(Id.)*

Implied trust — Comes into being by operation of law. (PNB *vs.* Aznar, G.R. No. 171805, May 30, 2011) p. 461

UNJUST ENRICHMENT

Application — Its main objective is to prevent one from enriching himself at the expense of another without just cause or consideration. (Flores *vs.* Sps. Lindo, G.R. No. 183984, April 13, 2011) p. 210

— There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. *(Id.)*

UNLAWFUL DETAINER AND FORCIBLE ENTRY

Action for — The complaint must sufficiently allege: (a) initially, the defendant has possession of property by contract with or by tolerance of the plaintiff; (b) eventually, however, such possession became illegal upon plaintiff's notice to defendant, terminating the latter's right of possession; (c) still, the defendant remains in possession, depriving the plaintiff of the enjoyment of his property; and (d) within a year from plaintiff's last demand that defendant vacate the property, the plaintiff files a complaint for defendant's ejectment. (Macaslang *vs*. Zamora, G.R. No. 156375, May 30, 2011) p. 337

WITNESSES

Credibility of — Findings of trial court are entitled to great respect and accorded the highest consideration by the appellate court; exceptions. (People *vs*. Mercado, G.R. No. 189847, May 30, 2011) p. 747

(People *vs*. Ogarte, G.R. No. 182690, May 30, 2011) p. 642

(People *vs*. Alivio, G.R. No. 177771, May 30, 2011) p. 565

(San Juan *vs*. People, G.R. No. 177191, May 30, 2011) p. 547

(People *vs*. Baluya, G.R. No. 181822, April 13, 2011) p. 140

(People *vs*. Marquez, G.R. No. 181440, April 13, 2011) p. 124

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